



EMPLOYMENT TRIBUNALS

Claimant: Mr R Stevenson

Respondent: Home Office

HELD AT: Middlesbrough ET **ON:** 20, 21, 22, 23 March 2023

BEFORE: Employment Judge McCluskey

REPRESENTATION

Claimant: In person

Respondent: Represented by Mr M Brien, Counsel

JUDGMENT having been sent to the parties on 13 April 2023 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

Introduction

1. The claimant is making the following complaints: direct disability discrimination, discrimination arising from disability, failure to make reasonable adjustments, harassment related to disability and victimisation.
2. Prior to the final hearing the respondent accepted that the claimant was disabled as defined by section 6 Equality Act 2006 at the time of the events that the claim is about and that they had knowledge of the disability at the relevant time. The claimant's disability is type 2 diabetes with side effects – short term memory loss and peripheral neuropathy.

3. Prior to the final hearing the claimant made an application to the Tribunal to amend his claim to include a complaint of victimisation. The amendment was allowed by the Tribunal and the respondent filed an amended response.
4. On the first morning of the final hearing the respondent conceded liability in relation to the victimisation complaint. The amount of compensation for the victimisation complaint is to be determined by the Tribunal. The other complaints are contested on both liability and remedy.
5. Issues had been identified by parties at the case management preliminary hearing on 23 September 2022, as set out in the note of that case management hearing. Parties had prepared and exchanged witness statements prior to the final hearing.
6. The claimant gave evidence on his own behalf. Mr Christopher Roberts – the claimant’s current line manager, Mrs Victoria Debrick – a senior manager of the respondent and Miss Jane Platt – the decision manager in relation to the claimant’s grievance dated 20 September 2021, gave evidence on behalf of the respondent.
7. The witness statement of the claimant and two of the respondent’s witness statements made various references to the claimant’s home Wi-Fi and that the respondent had not paid for this to be upgraded when the claimant was sent home at the start of the pandemic and thereafter.
8. It appeared to the Tribunal from these witness statements that the decision of the respondent not to pay for an upgrade to the claimant’s home Wi-Fi was a ground upon which he complained that he had suffered disability discrimination. He had also referred to this in his ET1 claim form.
9. On discussion with the claimant, he clarified that his assertion is that the respondent had not paid for an upgrade to his home Wi-Fi but had paid for an upgrade to the home Wi-Fi of other employees of the respondent. He appeared to assert that he had been treated less favourably than other employees and that he believed that this was because of his diabetes.
10. It appeared to us that the claimant may also be asserting that he had suffered discrimination arising from disability by reason of the Wi-Fi matter. The claimant clarified that he asserted that he had been treated unfavourably by the refusal to pay for an upgrade to his home Wi-Fi. The claimant’ said his sickness absence was the ‘something’ that arose in consequence of his disability and the unfavourable treatment was because of the sickness absence.
11. The Tribunal determined that the assertion about the refusal to pay for a Wi-Fi upgrade of his home should be added to both the direct disability discrimination

claim and the discrimination arising from disability claims. These were facts already pled by the claimant in his claim form. The respondent made no substantive objection to the addition of these matters to the issues.

12. The ET1 claim form was presented on 11 July 2022. ACAS was notified on 4 May 2022 and the certificate was issued on 14 June 2022. Subject to a course of continuing conduct, the cut off point for claims was identified 3 February 2022.

Issues

13. The issues the Tribunal required to decide at the final hearing are those set out in the record of the preliminary hearing on 23 September 2022 and updated in light of the above matters. They are set out in Appendix 1.

Findings in fact

14. The Tribunal has only made findings in fact necessary to determine the issues. All references to page numbers are to the paginated joint bundle of documents provided to the Tribunal.
15. The claimant has been employed by the respondent since 2005. He remains employed by the respondent. His current role is as a Business Support Officer. He works in the passport office in Durham.
16. The claimant has type 2 diabetes with side effects – short term memory loss and peripheral neuropathy.
17. Since around April 2021 the claimant's line manager has been Mr Christopher Roberts. Prior to that the claimant reported to Mr Anthony Glenwright. Mrs Victoria Debrick is a more senior manager in the team where the claimant works.
18. Prior to around 20 March 2020 the claimant's role required him to be physically present in the office. Due to his diabetes, he worked a 'sculpted role'. He mainly carried out the physical duties of the Business Support Officer role rather than the technical duties of that role. The physical aspects involved setting up and working with IT equipment in the office, for staff who were office based. The removal of the technical duties was an adjustment to his role and was due to short term memory loss associated with his diabetes.
19. On or around 20 March 2020 the UK went into a national lockdown due the coronavirus pandemic. The claimant was sent home, along with the majority of the respondent's workforce.

20. The claimant carried out some very limited duties from home and was provided with a laptop to do so. The claimant experienced significant connectivity problems with his Wi-Fi whilst trying to work from home.
21. On or around 2 September 2020 the claimant was placed on special leave by the respondent. Mrs Debrick was of the view that the claimant could not work effectively from home. This was because most of his duties required him to be physically present in the office, but he was unable to return to the office as he was shielding due to his clinically extremely vulnerable status. Around the same time Ms Debrick decided that the respondent would not pay for a home Wi-Fi upgrade for the claimant. This was also because most of his duties required him to be physically present in the office.
22. The claimant continued to receive full pay whilst on special leave. Employees, including the claimant, were not required to carry out any duties whilst on special leave.
23. On 1 April 2021 the UK government advice to the clinically extremely vulnerable to cease shielding, came into effect. The claimant was in the clinically extremely vulnerable category due to his diabetes.
24. On 13 April 2021 the claimant attended the respondent's office to discuss a return to work. This was due to the change in UK government advice about shielding, effective from 1 April 2021.
25. During that meeting the claimant said that due to his clinically extremely vulnerable status, he would feel better returning to work after his first covid vaccine. The claimant said he would only consider the Pfizer vaccine. The claimant agreed that he would take steps to obtain the Pfizer vaccine. The claimant indicated that he was unwilling to return to the workplace prior to being vaccinated due to his concerns about catching covid.
26. The phone call to which the harassment complaint relates took place between the claimant and Mr Roberts on or around 19 April 2021. This was a one-off event.
27. The claimant was not a member of a trade union at the time of the call with Mr Roberts. He decided to join a trade union after that call, and he did so. He could not remember the exact date. By 21 July 2021 he had engaged the services of a trade union. He copied in his trade union representative Ms Toward to his emails to Mr Roberts on 21 July 2021 page 235. Ms Toward accompanied the claimant to an attendance review meeting with the respondent on 28 July 2021 page 240. The claimant had the benefit of union representation by July 2021. The claimant relied on his trade union to tell him about time limits. He had previously contacted ACAS for employment advice.

28. By 16 June 2021 the claimant had not yet returned to work. On 16 June 2021 Mr Roberts wrote to the claimant. The letter stated that his presence in the office was required to complete his job role and conduct his necessary training. The letter stated that extended special leave could not be continued indefinitely and that special leave would end on 18 June 2021. If the claimant was unable to return to work on 21 June 2021, he required to submit medical evidence from his GP stating that he was unfit to return to work.
29. The claimant submitted a fit note with effect from 21 June 2021 stating that he was unfit for work due to diabetic neuropathy and stress at work (page 227).
30. The claimant remained on sick leave and was in receipt of sick pay from the respondent from 21 June 2021 until around 7 May 2022. From around 8 May 2022 the respondent placed the claimant on disability leave, and his full pay resumed.
31. On 28 July 2021 (page 240) at an attendance review meeting the claimant said he was not yet ready to return to work. He said when he was ready to come back to work he would need a mobility scooter.
32. On 14 October 2021 (page 283) the claimant asked to be referred to occupational health as his health had deteriorated. He was not yet ready to return to work. He remained signed off sick.
33. On 23 November 2021 (page 296) the claimant met with occupational health. The occupational health report recorded that the claimant had said he required a mobility scooter for work. He did not indicate that he was ready to return to work. He remained signed off sick. His fit note stated stress related problem.
34. On 2 December 2021 at an attendance review meeting to discuss ongoing barriers to returning to work, (page 302) the claimant indicated he may be able to undertake the physical aspects of his role if he was provided with a mobility scooter. He remained signed off sick. His fit note stated stress related problem.
35. On 22 December 2021 there was a workplace assessment with the claimant (page 308). The workplace assessment recommended an occupational health referral. He remained signed off sick. His fit note stated stress related problem.
36. On 11 February 2022 (page 340) occupational health prepared another report. The report stated that no return-to-work date could be offered as this would depend on an improvement in the claimant's psychological resilience and resolution of perceived workplace stressors. The report stated that the claimant had raised a grievance and wanted this to be resolved. The claimant remained signed off work. The report also noted that the claimant had said he would be

able to undertake the physical aspects of his role if he was provided with a mobility scooter.

37. Mr Roberts met with the claimant on 2 March 2022 to confirm that he was looking into purchasing a mobility scooter for the claimant. The claimant agreed with this course of action. The claimant indicated he would be able to return to the workplace when a mobility scooter was available.
38. Although the claimant had said he needed a mobility scooter for work there was no professional recommendation of such by occupational health or by the claimant's GP. Nevertheless, Mr Roberts concluded that obtaining a mobility scooter was the best way to try to get the claimant back into the workplace.
39. Mr Roberts required to carry out the procurement process for the mobility scooter himself, as there was no professional recommendation to provide the claimant with a mobility scooter. This created a practical difficulty for Mr Roberts. If he had had such a recommendation, he could have pushed procurement through more quickly and asked others to assist with the process.
40. On 28 April 2022 the respondent met with the claimant and carried out a risk assessment of the claimant's own mobility scooter. This was to assess whether his own mobility scooter would be suitable for use in the office instead of the respondent obtaining a separate mobility scooter for office use. Around this time there were significant other work pressures on Mr Roberts due to his workload. The claimant's own mobility scooter was assessed as being unsuitable for the office. Immediately thereafter Mr Roberts made further enquiries about obtaining a mobility scooter externally. At this point the claimant was still signed off work due to stress.
41. On 24 May 2022 (page 383) Mr Roberts requested three quotes from external suppliers to provide a mobility scooter for the claimant. The three quotes were in accordance with the respondent's procurement requirements. There was no approved supplier list for the product. Mr Roberts had to seek approval for a credit card purchase before progressing.
42. On 27 May 2022 (page 385) Mr Roberts sent the claimant a picture of the mobility scooter for which he was obtaining quotes. Mr Roberts ordered the mobility scooter shortly thereafter.
43. The claimant was moved off sick leave and onto disability leave around the time that the mobility scooter was ordered in May 2022.
44. The mobility scooter arrived with the respondent for his use on or around 14 October 2022. The claimant has not yet used the mobility scooter as he has not yet returned to work.

45. It was conceded by the respondent that at a meeting on 8 December 2022 to discuss a return to work the claimant was told by Mr Andrew Bannon, Northern Area Service Delivery Manager, that he could not return to his substantive post whilst there was an ongoing Tribunal claim.

Grievance

46. The claimant submitted a written grievance dated 20 September 2021 (page 262). The grievance was detailed and alleged bullying and discrimination since March 2020 and the commencement of the pandemic.

47. Part of the claimant's grievance concerned a refusal by the respondent to agree to a home Wi-Fi upgrade for the claimant. The claimant said that he was being treated differently because of his disability. He said that there were able bodied people working from home, with adjustments given to them including assistance with Wi-Fi.

48. An independent grievance manager was appointed by the respondent. That manager met with the claimant in November 2021 to discuss his grievance. She identified that an investigation was required first of all by an investigation manager, separate to her role as grievance manager. She also identified that as she was retiring shortly, she did not have capacity to take on the grievance manager role.

49. Thereafter, Ms Jane Platt, was appointed as the grievance manager. Ms Naylor was appointed as the investigation manager. Both undertook the roles in addition to their normal day to day duties. Ms Naylor' was very busy with her day-to-day duties as a trainer. h

50. The grievance was investigated by the respondent. The claimant attended two investigation meetings about his grievance with the investigation manager Ms Naylor. These took place on 12 January 2022 and 2 February 2022. On 30 March 2022 the claimant signed off on the record of the second investigation meeting with Ms Naylor. The respondent then met with Mr Roberts and Ms Debrick in or around March 2022 as part of the grievance investigation.

51. There was a considerable amount of documentation submitted by those who were interviewed, including by the claimant. This documentation required to be considered by the investigating manager Ms Naylor. Ms Naylor's investigation was carried out alongside her duties as a specialist trainer.

52. On 24 May 2022 the grievance investigation report was sent to Ms Platt. Ms Platt considered the claimant's grievance and the grievance investigation report which had been prepared. She agreed with the recommendations in the report that the claimant's grievance should not be upheld.

53. An outcome hearing between Ms Platt and the claimant was arranged for 18 July 2022. The claimant was unable to attend that hearing or a rearranged hearing on 25 July 2022. He attended a hearing on 27 July 2022 having joined one hour late.
54. The outcome of the grievance was communicated to the claimant in writing on 22 August 2022 by Ms Platt (page 407). The claimant's grievance was not upheld on any of the points he had raised. In relation to the Wi-Fi issue Ms Platt noted that all parties agreed that the claimant has a bespoke role within his team that is predominately the physical side of the job. Ms Platt concluded that the reason why the respondent had not paid for a home Wi-Fi upgrade for the claimant was that his role required to be carried out predominately in the office, due to the physical side of his job. She concluded that the claimant had not been treated differently to anyone else because of his disability (page 412).

Observations on the evidence

55. The Tribunal has only made findings of fact in relation to matters which are relevant to the legal issues to be decided. Where the evidence of the parties differed, the Tribunal has preferred the evidence of the respondent's witnesses as this accorded with the contemporaneous documentary evidence to which we were directed in the bundle.
56. That is in no way a criticism of the claimant or the evidence which he gave. The Tribunal formed the view that the claimant and the respondent's witnesses all did their best to give an accurate account of events, in so far as they remembered them. Given the passage of time it is inevitable that memories will have faded on certain aspects and the contemporaneous documentary evidence relied upon has therefore been of assistance to the Tribunal.
57. The Tribunal considered that in relation to the material facts as found, there was little significant dispute between the parties. The parties disagreed over the date of the phone call in April 2021 between the claimant and Mr Roberts. The date of the call was not material. The parties did not materially disagree about the content of the call. The disagreement was principally about the tone of the call.
58. It was not disputed that there had been no upgrade to the claimant's home Wi-Fi, either paid for by the respondent or the claimant. The claimant said he knew of other staff who had had such an upgrade paid for by the respondent. Ms Debrick and Mr Roberts said that they were not aware of any staff members who had had such an upgrade paid for by the respondent. There was no evidence before the Tribunal to allow it to make a finding, on a balance of

probabilities, that other staff had had a Wi-Fi upgrade paid for by the respondent.

59. The claimant said he felt left out when he was off sick and unable to return to the workplace. He said that had a major impact on him. He described having some really dark moments. He described himself as someone who gave a hundred percent to his job. He said Andrew Bannon was a person who had done him wrong, and he was upset by this. This evidence was accepted by the Tribunal who could understand the claimant's upset when he was ready to return to his job in December 2022 and was unable to do so.

Relevant law

60. Section 13 EqA is in the following terms: *13 Direct Discrimination (1) A person (A) discriminates against another (B) if, because of a protected characteristic, (A) treats (B) less favourably than (A) treats or would treat others.*
61. Section 15 EqA is in the following terms: *15 Discrimination arising from disability (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.*
62. Sections 20 and 21 EqA are in the following terms: *20 Duty to make adjustments(1)Where this Act imposes a duty to make reasonable adjustments on a person, this section, sections 21 and 22 and the applicable Schedule apply; and for those purposes, a person on whom the duty is imposed is referred to as A.(2)The duty comprises the following three requirements.(3)The first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.*
63. *21 Failure to comply with duty(1)A failure to comply with the first, second or third requirement is a failure to comply with a duty to make reasonable adjustments.(2)A discriminates against a disabled person if A fails to comply with that duty in relation to that person.(3)A provision of an applicable Schedule which imposes a duty to comply with the first, second or third requirement applies only for the purpose of establishing whether A has contravened this Act by virtue of subsection (2); a failure to comply is, accordingly, not actionable by virtue of another provision of this Act or otherwise.*
64. Section 26 EqA is in the following terms: *26 Harassment (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.

65. Section 123 EqA is in the following terms: *123 Time limits (1)... proceedings...may not be brought after the end of—(a)the period of 3 months starting with the date of the act to which the complaint relates, or (b)such other period as the employment tribunal thinks just and equitable.*

Submissions

Both parties made oral submissions. There follows a very short summary of both. The Tribunal carefully considered the submissions of both parties during its deliberations and has dealt with the points made in submissions, where relevant, when setting out the facts, the law and the application of the law to those facts. It should not be taken that a submission was not considered because it is not part of the discussion and decision recorded.

Respondent submissions

66. Mr Brien submitted that the harassment claim is out of time as it is about an event that occurred on 19 April 2021. The cut-off date is 3 February 2022 therefore any issue prior to that date is out of time. It was a one-off act and not pled as a continuing act. It would not be just and equitable to extend time as the claimant had the benefit of trade union representation from around July 2021.

67. He submitted that all complaints about the failure to pay for a home Wi-Fi top up are out of time. The decision not to pay for a home Wi-Fi upgrade was made by Ms Debrick in 2020. Albeit the claimant lodged a grievance thereafter which was ongoing when he presented his claim form, the decision was a one-off decision made prior to the 3 February 2022 cut-off date.

68. He submitted that the provision of the mobility scooter and the timing of doing so is reasonable adjustments complaint. Although it is also pled as a section 13 and section 15 claim, there is no suggestion by the claimant that the delay in providing a mobility scooter is due to his disability or his sickness absence. The question is when did a reasonable period expire to provide a mobility scooter as a reasonable adjustment.

69. He submitted that in relation to time taken to deal with the grievance and not paying for a Wi-Fi upgrade for the claimant's home, these were bound to fail as both direct discrimination complaints and discrimination arising from disability complaints. There was no less favourable treatment or unfavourable treatment by reason of the claimant's disability or because of his sickness absence.

Claimant submissions

70. Mr Stevenson submitted that he is a person who will speak up if he needs to do so. He said that he was still fearful of returning to work due to covid but was ready to return.
71. He said that he felt harassed on the call on around 19 April 2021 when Mr Roberts demanded that he give him a date when he was getting his covid vaccination. He had to wait until he was given a date by the NHS and there was nothing he could do about that.
72. He submitted that other staff members were given equipment to work at home and that there will be a record of that with the estates team. He submitted that the respondent could have provided that record. He accepted that an upgrade to his home Wi-Fi may not have improved his connectivity but that it should have been tried by the respondent.
73. He submitted that there had been a delay in providing the mobility scooter to him in 2022.
74. He submitted that Mr Bannon could not remove his role from him, even on a temporary basis.
75. He submitted that the whole process has affected him mentally and physically.

Discussion and decision

Time limits

76. The Tribunal determined that the harassment claim is out of time. The phone call to which the claim relates took place on or around 19 April 2021. It is out of time given the limitation cut-off date of 3 February 2022. The Tribunal determined that the harassment claim is a single act rather than a continuing act. The claimant says he felt harassed after the call with Mr Roberts. He does not rely on the call to assert continued harassment beyond the limitation cut-off point of 3 February 2022, nearly a year later.
77. The question then is whether it is just and equitable to extend time. The claimant says that he relied on his trade union to tell him about time limits. He said that he was not a member of a trade union at the time of the call with Mr Roberts. He decided to join a trade union after that call, and he did so. He could not remember the exact date. By 21 July 2021 he had engaged the services of a trade union as he is copying in his trade union representative Ms Toward to his emails to Mr Roberts (page 235). Ms Toward then accompanied the claimant to an attendance review meeting on 28 July 2021 (page 240). The claimant

had the benefit of union representation by July 2021. He waited until around year after that to bring a claim for harassment to the Tribunal. He has provided no explanation for this delay. He has referred in evidence to seeking advice from ACAS previously. He was therefore aware of another source of advice, in addition to the trade union, open to him.

78. There is prejudice to the claimant if his harassment claim is not allowed to proceed. There is also prejudice to the respondent if the claim is allowed to proceed. Parties are being asked to recollect a matter that occurred nearly two years ago. There is some documentary evidence about the subject matter of the call. The content of that documentary evidence is disputed by the claimant. The claimant asserts that the tone of the call made him feel harassed. Mr Roberts denies that there was a tone to his call. After nearly two years since the incident the cogency of the evidence is significantly impaired. The Tribunal determined, taking account of the time delay, lack of explanation for the delay once trade union representation had been obtained and the impairment to the cogency of the evidence, that the balance of prejudice fell in favour of the respondent and that it was not just and equitable to extend time to allow the harassment claim to proceed.
79. Mr Brien also submitted that the complaints involving a refusal to upgrade the claimant's home Wi-Fi were out of time. He asserts that the decision not to upgrade the Wi-Fi was not a continuing act or ongoing conduct. He submitted that the decision never changed. He submitted that it was not a state of affairs extending beyond 3 February 2022, being the cut-off date. The decision was made by Mrs Debrick in 2020 and was not revised by anyone from the respondent, albeit a grievance was raised by the claimant which included his concerns about the respondent not having provided the home Wi-Fi upgrade.
80. The Tribunal has had regard to the test set out in **Commissioner of Police of the Metropolis v Hendricks 2003 ICR 530, CA**, as approved by the Court of Appeal in **Lyfar v Brighton and Sussex University Hospitals Trust 2006 EWCA Civ 1548, CA**. In Lyfar the Court of Appeal clarified that the correct test in determining whether there is a continuing act of discrimination is that set out in Hendricks. Thus, tribunals should look at the substance of the complaints in question — as opposed to the existence of a policy or regime — and determine whether they can be said to be part of one continuing act by the employer.
81. The Tribunal noted that one of the grounds of the claimant's grievance was his belief that he should be provided with a Wi-Fi upgrade to his home. He said it was his understanding that this had been provided to able bodied colleagues. His grievance was investigated by the respondent. The claimant attended two investigation meetings about his grievance with the investigation manager Ms Naylor. The second investigation meeting took place on 2 February 2022. On 30 March 2022 the claimant signed off on the record of the second investigation

meeting with Ms Naylor. On 24 May 2022 the grievance investigation report was sent to Miss Platt. The investigation report made findings on several matters including the respondent not paying for an upgrade to the claimant's home Wi-Fi. The outcome of the grievance was communicated to the claimant on 22 August 2022, although it is noted that this date is after presentation of the claim form. The substance of the complaint about the Wi-Fi was a matter which remained live for the claimant in his grievance and the handling of that grievance beyond 3 February 2022.

82. The Tribunal was therefore satisfied that matters concerning the claimant's home Wi-Fi were a continuing act, and one which extended beyond 3 February 2022, such that the complaints concerning the provision of a home Wi-Fi upgrade were ongoing within the time limits for presenting a claim to the Tribunal.

83. The failure to provide a home Wi-Fi upgrade is pled as a direct discrimination claim under section 13 EqA and as arising from a claim under section 15 EqA.

Direct disability discrimination

84. The claimant asserts direct disability discrimination in relation to (a) delay in investigating his grievance (b) failure to provide a mobility scooter and (c) refusal to pay for a Wi-Fi upgrade to his home. He has not provided any named comparators and relies on a hypothetical comparator.

85. In a complaint of direct discrimination, it is for the claimant to prove 'primary facts' which at least provisionally suggest that discrimination has taken place because of the protected characteristic - see for example **Royal Mail Group Ltd v Efofi [2021] UKSC 33**. If the claimant can do so, the onus moves to the respondent to show that no discrimination occurred, and if it cannot do that the complaint is likely to succeed. If the claimant cannot identify those primary facts, the onus does not transfer to the respondent and the complaint is likely to fail.

Delay in investigating grievance

86. The claimant asserts that he has suffered less favourable treatment by the delay in investigating his grievance.

87. The claimant submitted a written grievance dated 20 September 2021. His grievance concerned his treatment by the respondent since around the time of the pandemic lockdown in March 2020. The grievance was investigated by the respondent. The claimant attended two investigation meetings about his grievance with the investigation manager on 12 January 2022 and on 2 February 2022. On 30 March 2022 the claimant signed off on the record of the second investigation meeting.

88. The respondent then met with Mr Roberts and Ms Debrick in or around March 2022 as part of the grievance investigation. There was a considerable amount of documentation submitted by those who were interviewed which required to be considered.
89. The delay in commencing the investigation during the last few months of 2021 was explained by the respondent as being due to a change in the grievance investigation manager appointed. It was not originally Ms Platt. The time taken thereafter, from January 2022 until the investigation report was sent to Ms Platt in May 2022, was explained by the respondent as being principally due to the volume of documentation provided by all witnesses interviewed and that Ms Naylor was carrying out her investigations in addition to her day-to-day duties as a trainer.
90. The Tribunal accepted this evidence which was supported by documentation in the bundle. The claimant's complaint was principally about the time taken to carry out the investigation and reach an outcome, rather than a challenge to the reasons why there was a delay. He said in evidence that if Ms Naylor was so busy with her day-to-day duties she should not have been appointed and somebody who had more time should have been appointed.
91. Thereafter there was a period of around two months before Ms Platt had considered the investigation report and was ready to give her outcome. The respondent's evidence again was that this was due to her carrying out the grievance manager role in addition to her normal duties, and the volume of information provided by witnesses which she required to consider. The Tribunal accepted this evidence. Again, the claimant's evidence was principally a criticism of the time taken and whether she should have been given the grievance manager role alongside her other duties, rather than that he had been treated less favourably than a non-disabled employee would have been treated.
92. The Tribunal understood the claimant's frustration that it took a period of around eight months after he had submitted his grievance for the investigation to be completed and a further two months before the outcome of the grievance was ready to be communicated to him. It was nearly a year in total before he received the outcome in writing. The Tribunal's view is that this is a delay. However, the Tribunal was satisfied that the delay was not because of the claimant's disability, but rather for the reasons given by the respondent for the delay.
93. In these circumstances it could not be said the claimant was treated less favourably. A hypothetical comparator – a non-disabled employee working in the systems team as a business support officer who had raised a grievance

spanning a period of around eighteen months and where there was lots of documentation to consider, is likely to have been treated the same way due the reasons given by the respondent for the time taken to complete the grievance process.

Failure to provide a mobility scooter

94. The claimant asserts that he has suffered less favourable treatment by the failure to provide him with a mobility scooter.

95. As set out above the Tribunal found that there was no recommendation to provide a mobility scooter from occupational health or the claimant's GP. Nevertheless, as the claimant indicated that he needed a mobility scooter when he was ready to return to work, Mr Roberts decided to take steps to try to procure this. A mobility scooter was provided for the claimant's use on or around 14 October 2022.

96. In the circumstances, it cannot be said that there was a failure to provide a mobility scooter.

Refusal to pay for a Wi-Fi upgrade to the claimant's home

97. The claimant asserts that he has suffered less favourable treatment by the refusal to pay for a Wi-Fi upgrade to his home.

98. Mr Roberts and Mrs Debrick said that the majority of the claimant's job was office based and that was accepted by the claimant. Mrs Debrick and Mrs Roberts were not aware of the respondent paying for other employees to have their home Wi-Fi upgraded. The claimant said he understood that able bodied employees had been provided with a home Wi-Fi upgrade. He did not name any particular individuals for the purpose of a comparator.

99. It was accepted by the claimant in evidence, and as part of the grievance investigation, that prior to the covid pandemic he had a bespoke role within his team. This involved predominately carrying out the physical aspects of the job, rather than the technical aspects which were desk based. This bespoke role was because the respondent had made adjustments to his duties prior to the pandemic to accommodate his short term memory issues which were a side effect of his diabetes. In her grievance outcome Miss Platt concluded that the reason why the respondent had not paid for a home Wi-Fi upgrade for the claimant was that his role required to be carried out predominately in the office and could not be carried out from home. Additionally, the Tribunal noted that there was no evidence led by the claimant that an upgrade to his home Wi-Fi would have made any difference.

100. In these circumstances it could not be said the claimant was treated less favourably. A hypothetical comparator – a non-disabled employee working in the systems team as a business support officer, whose role was to carry out most of their duties in the office, is likely to have been treated the same way due to the need for their role to be office based.

101. In summary therefore the Tribunal was not satisfied that the claimant had made out a case of direct discrimination, in relation to any of the matters (a) - (c) above, which would put the onus on the respondent to prove that there was a non-discriminatory reason for its actions. In any event, the evidence was sufficient to show that the respondent did not act in a discriminatory way. To the extent that matters happened as the claimant described them, they did not involve the respondent treating him less favourably than it would have treated a person without his protected characteristic and this complaint fails.

Discrimination arising from disability

102. For a complaint under section 15 EqA to succeed it must be shown that the claimant was unfavourably treated by reason of ‘something’ arising in connection with his disability. Unlike complaints under section 13 EqA, there is no need to identify a comparator. If a valid complaint is provisionally made out, the respondent in question may be able to argue that the treatment is justified by being a proportionate means of achieving a legitimate aim. If it is able to do so the treatment will not be unlawful.

103. “Unfavourable treatment” is not defined in EqA but the EHRC Employment Code states at para. 5.7 that it means that a disabled person “must have been put at a disadvantage”.

104. The acts relied upon by the claimant for the discrimination arising from disability claim are the same as his direct discrimination claim, namely (a) delay in investigating the claimant’s grievance (b) failure to provide a mobility scooter and (c) refusal to pay for a Wi-Fi upgrade to the claimant’s home.

105. The ‘something’ arising in consequence of the claimant’s disability upon which he relies in relation to each of the acts complained of is his sickness absence. This was identified at both the case management preliminary hearing on 23 September 2022 and in the case summary which followed that hearing and at the outset of this final hearing. The claimant did not suggest any other ‘something’ arising upon which he relied.

Delay in investigating grievance

106. The Tribunal asked itself whether the delay in investigating the claimant's grievance is unfavourable treatment. If so, is it because of the claimant's sickness absence.
107. As set out above the Tribunal found that there had been a delay in investigating the claimant's grievance. The Tribunal was satisfied that this was unfavourable treatment. Thereafter, was the unfavourable treatment because of something arising in connection with his disability, namely his sickness absence? This is a necessary next step in a section 15 EqA complaint.
108. The delay in investigating the grievance was because of the change in investigating manager from another member of staff to Ms Platt, the volume of documentation for review and that the investigating manager and Ms Platt were working on the grievance in addition to their day-to-day duties. The Tribunal could not see how the delay arose because of the claimant's sickness absence. The delay arose because of the respondent's structure for allocating personnel to grievances and the time allocated to them to carry out those grievance duties in addition to their other day to day duties. The Tribunal could not see a link between the delay and his sickness absence.

Failure to provide a mobility scooter

109. The Tribunal asked itself whether the failure to provide a mobility scooter is unfavourable treatment. If so, is it because of the claimant's sickness absence.
110. As set out above the Tribunal found that there was no recommendation to provide a mobility scooter from occupational health or the claimant's GP. Nevertheless, as the claimant indicated that he needed a mobility scooter when he was ready to return to work, Mr Roberts decided to take steps to try to procure this. A mobility scooter was provided for the claimant's use on or around 14 October 2022. It cannot be said that there was a failure to provide a mobility scooter and therefore any unfavourable treatment.
111. The Tribunal also considered the time taken to provide a mobility scooter to the claimant. Although this was not specifically pled by the claimant, the Tribunal was mindful that he is a litigant in person and that discrimination law is complex. The Tribunal asked itself whether the time taken to provide a mobility scooter was unfavourable treatment. The Tribunal concluded that the time taken was not unfavourable treatment. The Tribunal was of the view that on 2 March 2022 once Mr Roberts concluded that obtaining a mobility scooter was the best way to try to get the claimant back into the workplace and the claimant agreed with this approach, Mr Roberts took steps to obtain mobility scooter in a manner which was adequate and proportionate,

following the respondent's procurement processes. The scooter was ordered by Mr Roberts in May 2022 around two months later. Thereafter the time taken to deliver the scooter by the supplier was outside of Mr Roberts control.

112. In the circumstances it could not be said that there was any unfavourable treatment by way of a failure to provide a mobility scooter or the time taken to obtain a mobility scooter. However, even if there was any unfavourable treatment in relation to the time taken to obtain a mobility scooter this arose because of the respondent's procurement processes. It did not arise from the claimant's sickness absence including his absence more generally when he was on special leave or disability leave.

Refusal to pay for a Wi-Fi upgrade to the claimant's home

113. The Tribunal asked itself whether the refusal to pay for the Wi-Fi upgrade is unfavourable treatment. If so, is it because of the claimant's sickness absence.

114. It was not disputed that there had been no upgrade to the claimant's home Wi-Fi, either paid for by the respondent or the claimant. The claimant said he knew of other staff who had had such an upgrade paid for by the respondent. Ms Debrick said that she was not aware of any staff members who had had such an upgrade paid for by the respondent. There was no evidence before the Tribunal to allow it to make a finding, on a balance of probabilities, that other staff had had a Wi-Fi upgrade paid for by the respondent.

115. In the circumstances it could not be said that there was any unfavourable treatment by way of the refusal to pay for a Wi-Fi upgrade to the claimant's home. However, even if there was any unfavourable treatment this arose because the claimant's role was predominately a physical one which required him to be physically present in the office. It did not arise from the claimant's sickness absence.

116. Therefore, the Tribunal did not uphold any of the claimant's complaints under section 15 EqA.

Reasonable adjustments

117. A claim of failure to make reasonable adjustments requires that a provision, criterion or practice, or a physical feature, or the absence of an auxiliary aid put the claimant at a particular disadvantage compared with people not sharing his disability, and that it would be reasonable for the respondent to make an adjustment which would wholly or partly alleviate the disadvantage. The respondent must have known or reasonably been expected to know

about the disability and the disadvantage caused at the time the adjustment allegedly should have been made.

118. The claimant says that there was a provision, criterion or practice in the form of (a) requiring employees to work at the respondent's premises or (b) the claimant's role requires him to work at the respondent's premises. He says this placed him at a particular disadvantage compared to someone without the claimant's disability, in that he was unable to work at the respondent's premises and was unable to carry out his role at the respondent's premises due to mobility issues caused by peripheral neuropathy which is a side effect of his type 2 diabetes.
119. The claimant maintained that providing him with a mobility scooter was an adjustment which reasonably should have been made. He did not say when the adjustment ought to have been made.
120. The Tribunal determined that providing a mobility scooter to the claimant is a reasonable adjustment to both PCPs pled by the claimant. This was not disputed by the respondent. Mr Brien submitted that a duty to provide a mobility scooter did arise. He submitted that the question then is on what date is there is a substantial disadvantage suffered by the claimant which requires to be alleviated by the respondent. Mr Brien submitted that the duty arose when the claimant was fit to come back to work and his concerns about covid had subsided to such an extent that he was willing to return to the workplace.
121. The Tribunal agreed that the question for it is on what date is there is a substantial disadvantage suffered by the claimant which requires to be alleviated by the respondent. Put another way, and again as submitted by Mr Brien, when did a reasonable period expire to provide the mobility scooter and had the respondent provided a mobility scooter by that time. It is not disputed that the mobility scooter arrived with the respondent for his use on or around 14 October 2022.
122. The claimant first raised the possibility of a mobility scooter for work in July 2021. At various meetings thereafter, both at attendance review meetings and at occupational health meetings the claimant refers to the respondent obtaining a mobility scooter for work. At those meetings however, the claimant remained off sick, was expressing concerns about contracting covid due to his diagnosis of diabetes and was expressing an unwillingness to return to work due to his concerns about contracting covid. That remained the claimant's position until around 2 March 2022.
123. For example, the report of occupational health following their meeting with the claimant on 11 February 2022 states that no return-to-work date could

be offered as this would depend on an improvement in the claimant's psychological resilience and resolution of perceived workplace stressors.

124. The claimant was asked in cross examination when he told the respondent that he was ready to come back to work. The claimant was unable to provide a date. He said that it was when he was having discussions with the respondent about the purchase of a mobility scooter.
125. The Tribunal was satisfied that 2 March 2022 was when the respondent first discussed with the claimant that it was looking into the purchase a mobility scooter. The Tribunal was therefore satisfied that was the earliest date when the claimant was willing and ready to return to the workplace and it could not have been any earlier than this, particularly given the occupational health report of 11 February 2022 when no return-to-work date could be given.
126. The respondent gained knowledge of the disadvantage on 2 March 2022, and so the duty to provide a mobility scooter applied from then on.
127. The Tribunal concluded that the requirement to avoid the substantial disadvantage incurred by the claimant due to his diabetes only took effect when the claimant was ready to return to work, in the sense that he was fit to come back to work and his concerns about covid had subsided to such an extent that he was willing to return to the workplace and that he had told the respondent that he would come back to work.
128. The Tribunal concluded that in the period from 2 March 2022 until the mobility scooter was ordered in May 2022 the respondent was actively engaged in fulfilling its duty to avoid the substantial disadvantage incurred by the claimant, by obtaining quotations, following the procurement process and liaising with the claimant on the type of mobility scooter required. The Tribunal decided these steps were done in an adequate and proportionate way and the scooter was ordered around the end of May 2022.
129. Once the mobility scooter was ordered the respondent needed to wait until it was delivered by the external supplier in October 2022. There was no evidence that the respondent had control over that timescale, and it is within the Tribunal's knowledge and as submitted by Mr Brien that supply chains were delayed and impacted due to covid.
130. Consequently, the Tribunal concluded that there was no breach of the respondent's duty to make the reasonable adjustment of providing a mobility scooter and in doing so in a timely manner once the duty arose on 2 May 2022.

Victimisation

131. Liability in relation to the victimisation complaint was conceded by the respondent at the outset of this final hearing. In submissions Mr Brien conceded that at a meeting on 8 December 2022 to discuss a return to work the claimant was told by Mr Andrew Bannon, Northern Area Service Delivery Manager, that he could not return to his substantive post whilst there was an ongoing Tribunal claim.
132. The claimant's victimisation complaint therefore succeeds.

Remedy

133. Mr Brien submitted that the reason Mr Bannon told the claimant what he did on 8 December 2022 was not malicious but due to an unfortunate misunderstanding and which had been supported by advice from the respondent's HR team. Mr Brien said that advice was wrong and that was unfortunate. The Tribunal did not hear from Mr Bannon on this matter.
134. Mr Brien submitted that the intention was the redeployment be temporary and the claimant had not suffered any loss of earnings. It had prevented the claimant from returning to his substantive post for a period of three months.
135. The claimant accepted that he had no loss of earnings in the period after 8 December 2022 until the date of this Tribunal.
136. In relation to injury to feelings more generally, the claimant said he struggled and felt left out when he was off sick and unable to return to the workplace. He spoke about this in general terms. He said that had a major impact on him. He described having some really dark moments. He described himself as someone who gave a hundred percent to his job. In relation to the victimisation complaint in particular, he said Andrew Bannon was a person who had done him wrong and he was upset by this.
137. On compensation for injury to feelings the Tribunal is entitled to look at the matter broadly. We considered that this fell in the lower Vento band as it was a one-off occurrence but was mindful that it came on the back of a long period of absence for the claimant. The Tribunal has determined that an award of £5000 injury to feelings should be made. Interest at 8% is due on that sum from the date of the discriminatory conduct on 8 December 2022 to 23 March 2022. The Tribunal has calculated that sum at £116.17.
138. The Tribunal can readily understand that the claimant would be upset at being ready to return to his substantive role and then being told by a senior manager on 8 December 2022 that he could not do so for a period of time. After having been out of the office since March 2020, the claimant found

himself in a position where he felt safe enough to return to work and he would have access to his mobility scooter which was now available. Only to be told that the basis upon which he could return would be to a different role as above. The Tribunal readily understands that this would leave the claimant feeling upset.

J McCluskey

Employment Judge McCluskey

Date: 30 June 2023

JUDGMENT SENT TO THE PARTIES ON

6 July 2023

M Richardson

FOR THE TRIBUNAL OFFICE

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

APPENDIX 1

Time limits

- 1) Were the discrimination complaints made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:
 - a) Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?
 - b) If not, was there conduct extending over a period?
 - c) If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?
 - d) If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:
 - i) Why were the complaints not made to the Tribunal in time?
 - ii) In any event, is it just and equitable in all the circumstances to extend time?

Direct disability discrimination (Equality Act 2010 section 13)

- 2) Did the respondent do the following things:
 - a) Delay in investigating the claimant's grievance
 - b) Fail to provide a mobility scooter
 - c) Refuse to pay for a Wi-Fi upgrade to the claimant's home
- 3) Was that less favourable treatment? The claimant has not named anyone in particular who he says was treated better than he was.
- 4) If so, was it because of disability?

5) Did the respondent's treatment amount to a detriment?

Discrimination arising from disability (Equality Act 2010 section 15)

6) Did the respondent treat the claimant unfavourably by:

- a) Delay in investigating the claimant's grievance
- b) Fail to provide a mobility scooter
- c) Refuse to pay for a Wi-Fi upgrade to the claimant's home

7) Did the following things arise in consequence of the claimant's disability:

- a) The claimant's sickness absence

8) Was the unfavourable treatment because of any of those things?

9) Was the treatment a proportionate means of achieving a legitimate aim? The Tribunal will decide in particular:

- a) was the treatment an appropriate and reasonably necessary way to achieve those aims;
- b) could something less discriminatory have been done instead;
- c) how should the needs of the claimant and the respondent be balanced?

10) Did the respondent know or could it reasonably have been expected to know that the claimant had the disability? From what date?

Reasonable Adjustments (Equality Act 2010 sections 20 & 21)

11) Did the respondent know or could it reasonably have been expected to know that the claimant had the disability? From what date?

12) A "PCP" is a provision, criterion or practice. Did the respondent have the following PCPs:

- a) Requiring employees to work at the respondent's premises.
- b) The claimant's role requires him to work at the respondent's premises.

13) Did the PCPs put the claimant at a substantial disadvantage compared to someone without the claimant's disability, in that he was unable to work at the respondent's premises?

14) Did the respondent know or could it reasonably have been expected to know that the claimant was likely to be placed at the disadvantage?

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

- a) Providing him with a mobility scooter

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

17) Did the respondent fail to take those steps?

Harassment related to disability (Equality Act 2010 section 26)

18) Did the respondent do the following things:

- a) Chris Roberts call the claimant on or around 15 April 2021 requesting an update on vaccinations?

19) If so, was that unwanted conduct?

20) Did it relate to disability?

21) Did the conduct have the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

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

Remedy for discrimination

23) Should the Tribunal make a recommendation that the respondent take steps to reduce any adverse effect on the claimant? What should it recommend?

24) What financial losses has the discrimination caused the claimant?

25) What injury to feelings has the discrimination caused the claimant and how much compensation should be awarded for that?

26) Has the discrimination caused the claimant personal injury and how much compensation should be awarded for that?

27) Should their compensation be reduced as a result?

28) Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply? Did the respondent or the claimant unreasonably fail to comply with it?

29) If so is it just and equitable to increase or decrease any award payable to the claimant?

30) By what proportion, up to 25%?

