EMPLOYMENT TRIBUNALS

Claimant: Mr J. Sandhu

Respondent: Ministry of Justice

London Central

Employment Judge Goodman
Mrs B K Saund
Ms J. Tombs Hearings 10, 13, 14, 15 January 2025
Panel deliberation 16 January 2025

Representation:
Claimant: in person
Respondent: Ms J. Moore, counsel

JUDGMENT

The claims of disability discrimination, victimisation, and unauthorised deductions from wages, do not succeed.

REASONS

1. The claimant worked for the respondent as delivery manager at Westminster magistrates' court. This case is about his employer's management of his attendance record, including whether he could work from home when unwell.

2. He has brought claims of discrimination because of something arising from disability, failure to make reasonable adjustments for disability, unlawful deductions from pay, and victimisation. The respondent disputes the claims.

3. The issues we have to decide were listed at earlier case management hearings and the final list is appended to this judgement.

Conduct of the Hearing

4. The hearing was held in Victory House, with prior permission for one of the respondents witnesses to give evidence remotely. On the first day the tribunal also agreed that other witnesses and the HR manager could observe the proceedings remotely, although they would be giving their own evidence in person. This is a public hearing, the facilities for remote observation are already

available, and no reason was given why they should not.

5. Also on the first day the tribunal allowed an application by the claimant to rely on his witness statement although served two hours after he had seen the respondent's statements. He had not understood (despite the case management orders) that he had to prepare a statement himself, thinking his grounds of claim were his evidence. The statement he drafted in haste largely replicates the grounds of claim. It does not address the material in the respondent's statements, so he has not stolen any advantage by late service.

Application to Postpone because of Second Claim.

6. Finally on the first hearing day, the claimant asked for a second claim, 6021111/24, to be heard together with this one. This claim was presented on 6 December 2024. It has not yet been sent to the respondent, which knows of it only from a telephone call with their solicitor earlier this week. The tribunal adjourned briefly while the claimant considered whether he should ask for a postponement to enable the two claims to be heard together. The claimant then asked for postponement. The judge found the ET1 in the second claim on the case management system and summarised its content for the benefit of the non-legal members and counsel for the respondent. The respondent then objected to postponement and asked for this claim to be heard as listed and the second claim to be heard later.

7. After hearing the parties the tribunal adjourned to consider the application and took the opportunity to read further into the hearing bundle for relevant material, then decided to refuse the postponement application. The second claim should proceed in the usual way.

8. The reasoning for this decision requires a summary of the claimant's recent employment history. The victimisation claim in this case concerns the claimant's grievance in October 2023 about, among other things, working arrangements, in particular, adjustments to work from home and at work. When the respondent investigated this grievance, the investigator noted in her December 2023 report that his timekeeping might be a disciplinary matter: in her view the claimant had started work late, finished early, did not make the time up, and did not file flexi timesheets. The claimant could see this in her report, which he had discussed with the grievance decision maker on 19 January 2024. In April 2024 he added "being referred …for disciplinary action" to the list of issues in this claim (5.2.9); his trade union asked the employer for any disciplinary action to be postponed until he was back at work - he had been off work with stress from 27 October 2023. On 12 September 2024, shortly before his return to work, he asked if disciplinary action was still pending. In October he began a phased return, to a different job. Soon after his return, he was invited to a disciplinary meeting to investigate the timekeeping issues identified by the grievance investigator 9 months earlier. His trade union representative argued it was now too late to discipline him for this, On 30 October 2024 the claimant resigned, saying that this was another example of discriminatory treatment, and he was being punished for raising a grievance. He then presented the second claim, for unfair and discriminatory constructive dismissal.

9. The tribunal accepts that had this claim come to the respondent's attention before today, certainly before Christmas, it may well have been convenient to amend the list of issues to add a constructive dismissal claim as 5.2.10 on the list

of issues, and hear both claims now. Most of the relevant documents are already in the hearing bundle. However, the respondent would now need to find and call evidence from the manager who decided to start a disciplinary investigation, and counsel would have to revise her cross examination and submissions. It is not practical in the time available.

10. If postponed so that all the issues can be heard together, the respondent will incur the costs of a fully prepared case, which they are unlikely to recover from an unemployed claimant even if a costs order were made. The length of hearing means it will not come back for nearly a year. The expense and delay is significant.

11. The constructive dismissal claim is a severable issue. The tribunal has to decide whether there was victimisation in considering disciplinary action. The issue for the constructive dismissal claim is whether there was a breach of trust and confidence in initiating disciplinary action when the claimant returned to work, after so long, or whether the respondent had reasonable and proper cause to consider disciplinary action. (The tribunal understands the respondent's case to be that they should not start any disciplinary action while the claimant was off sick with stress). This is a clearcut and severable issue. The background facts will be determined in our findings of fact on the issues on our list, including 5.2.9. The hearing time for the second claim will be much shorter because of that.

12. We concluded that justice is better done by hearing the current issues now and leaving the constructive dismissal to a further hearing.

Evidence

13. The tribunal heard evidence from:

The claimant **Jasdeep Sandhu**
His wife, **Tranam Sandhu**. Mrs Sandhu also cross examined the respondent's witnesses on behalf of her husband.
Phil Wates, PCS trade union representative
Anne Downer, Operations Manager and claimant's line manager
Alison Aedy, Cluster Manager
Dee Kavanagh, who investigated the claimant's grievance. She gave evidence remotely.
Grant Morris, who decided the claimant's grievance

14. There was a main hearing bundle of 657 pages with a separate index. Unfortunately, due to numerous later additions, the paper page numbers did not align to the electronic pages by increasing and unpredictable increments. The index and witness statements referred to the paper page numbers, and we were only provided with electronic materials. The extra time taken up finding the right page impeded proper hearing of the evidence. As the government legal department prepares so many case in this tribunal region, they are asked to make sure in future that their electronic hearing bundles do conform to the Presidential practice directions, CPR and case management orders.

15. Other than this the materials were well organised. There was a supplementary bundle of the claimant's fit notes and return to work meetings, and a smaller bundle of correspondence about the claimant's late witness statement,

plus a cast list, chronology and list of essential reading. We read those documents to which we were directed.

Findings of Fact

16. Westminster Magistrates Court differs from other London courthouses in hearing a variety of high profile cases, extradition and terrorism, which puts it in the public eye, in addition to its normal case load. Security is a major concern, requiring a senior manager on site to cover it. It is also the listing hub for central and south London courthouses. There is a large cell area, and custody numbers there are usually higher than the rest of London. The Chief Magistrate and his senior judges are on site every day. There are also said to be "significant building issues", requiring close management.

17. The operations manager was Anne Downer, and the two delivery managers reported to her. In turn, she reported to the cluster manager for London magistrates courts, Allison Aedy.

18. The claimant started work as delivery manager at Westminster Magistrates Court on the 20th of September 2021. He had not worked in the court service before. He had lately worked as a leisure centre manager and in past years had been a police community support officer. He was assigned to manage security of the building along with other on site duties. A senior manager had to be on site at all times to deal with security difficulties as they arose. He was advised to work with the listing officers to learn how the listing system worked, and to concentrate on learning Common Platform, the new IT system being introduced. Two team leaders reported to him, so he had to manage their absences and leave. There were online training courses, some of them mandatory.

19. In March 2022 he had a first meeting with his mentor. The claimant said he did not need mentoring assistance with security, HR or attendance management, and that he relied on his fellow delivery manager, who had long service with HMCTS, for learning other tasks.

Disability

20. In April 2020, the claimant, who had not previously suffered from headaches, began to have bad pain in his head with red and tender eyes. Initially it was thought that he had scleritis, an eye condition, and reviewed by ophthalmologists, but in August he was also referred, with a tentative diagnosis of cluster headache, to a neurologist, Dr J. Stern, who noted bilateral pain in the temples and eyelids and pain on movement. An MRI scan was carried out and reported as normal. The tentative diagnosis was either cluster headache, with atypical features, or migraine. He was prescribed a steroid, Prednisolone, to be followed by Verapramil, and Sumatriptan injection for an acute attack.

21. He was referred to neurologist again in June 2023 for recurrent episodic headache with red eyes and photophobia. Doctor F Nicolini diagnosed atypical cluster headache. She recorded that these were occurring two to three times a day, and also waking him at night. He was using Ibuprofen; he had not found Sumatriptan helpful. She recommended a trial of Indomethacin, and if that was not successful, more Prednisolone, and Tepiramate. For acute attacks she recommended oxygen therapy, to be inhaled through a mask for 20 minutes. An

8 November 2023 letter indicates that the claimant had had "some difficulties in having the oxygen therapy at home", but he then had a cylinder, and a start was then made. She also referred him to a pain clinic, where in April 2024 a nerve block was recommended. Th tribunal does not know if this has been done and with what effect.

22. The claimant describes how he has some warning of headache onset during the day, but at night it will wake him up suddenly. Sleep deprivation makes him fatigued during the day. The sudden onset is disruptive, and overall the effect has been depressing, with an impact on family relationships.

23. The claimant states how most people have clusters of headaches lasting 4 to 12 weeks but he is in among those sufferers who have them chronically. They come and go unpredictably.

Sickness Absence and how the Respondent Managed It

24. Having started work in September 2021, by February 2022 he was being warned that due to his poor sick record, he would be going on to half pay at the end of March. Unfortunately, there was no record of his absences, sick or otherwise, in the hearing bundle. A 2014 policy in the bundle shows that employees are entitled to six months full pay during any rolling 12 month period, followed by 6 months half pay, but with a maximum of ten months in a four year rolling period, building up with service, starting at one month in the first year of service, two months in the second year of service, and so on. The number of days the claimant took off sick, must have been significant.

25. The respondent has a policy for managing sickness absence, although the full policy was not in the hearing bundle. Our understanding from the evidence is that when staff are off sick they are required to telephone to speak directly to a manager, rather leave a message. They must submit sick notes to cover absence, and fill in a form on return to work. There must then be a return to work discussion with the manager, so they can (among other things) identify any underlying cause.

26. If absence lasts 14 days or more, there will be review meetings, in case help is needed to enable the employee to return to work as soon as they are well enough. There is also provision for "phased return" after long term sickness absence, to build up to a normal working pattern. An employee is off sick receives sick pay for a period determined by length of service. An employee who has been signed off as fit but is on a phased return receives full pay.

27. Where a manager is concerned about levels of sickness absence they:

> "will take steps to improve attendance, which may include formal action. Managers may use written improvement warnings to address unsatisfactory attendance, but will consider all the circumstances of the case before taking action… Managers will use discretion, considering the circumstances of all absences, including disability and long term health conditions, taking action when there are concerns about health and well-being or when absence levels are unsatisfactory**".**

The evidence we heard suggests that there were "trigger points" when a

manager should would consider whether there should be an intervention, but we do not know what they were.

28. The claimant had taken enough days sick by the end of March 2022 to be reduced to half pay. Not all that absence had to do with headaches or scleritis. WhatsApp messages to his manager show that over the winter of 2021 to 2022 about absence from work show he also suffered toothache, a "tough night with the kids", severe delays on the train, or that he was late because of "stuff going on at home", or waking up late after "horrible night of sleep". In March 2022 he had painful cold sores and ulcers in the mouth, then Covid symptoms. In April and May he had some time off because of his wife's illness and his son's school.

29. Miss Downer's notes of absence management of the claimant begin in June 2022. In June 2022 he reported delay driving in because of traffic, and then had pain in the head and eyes with a diagnosis of scleritis. In July 2022 he could not get to work because his eyes were watering.

First Occupational Health Report

30. Miss Downer arranged an occupational health report, carried out at the beginning of August 2022. The occupational health physician recorded the claimant should be diagnosed with scleritis and blepharitis (both eye inflammation), and that symptoms occurred predominantly in summer. He had dry, red, painful eyes with blurring of vision and headache occurring on and off despite medication. This caused problems with sleep, driving and using a computer. This caused unpredictable episodes of sickness absence, but the doctor recorded that he was otherwise fit for work. As the condition was: "known to be associated with episodes of variable severity at an unpredictable frequency leading to increased frequency of sickness absence, you may wish to consider revising any management triggers related to sickness absence in line with your internal policies". The doctor was hopeful that with further treatment as appropriate he would attend reliably in future.

31. The claimant was off work for seven days at the end of August 2022 with a disturbed sleep pattern due to head pain. By then he had had 35 days off sick with eye disease, plus 12 days related to Covid.

32. The WhatsApp messages continue to show frequent lateness or absence through August and September 2022, as well as traffic delays. The next record shows he was away for five days with a chest infection in early October 2022. Anne Downer made a note that an attendance review meeting was required.

33. Then he was away for 31 days, from 11th November to 28th December 2022. "Scleritis" was the condition recorded on the sick notes. He was to have returned earlier, but on 16th December he reported that he was due back on Monday but he may not be fit to drive in the mornings, and spoke of a phased return (during which he would work from home). Anne Downer responded that the phased return would be the next four days, during which he should limit his time on the laptop so as not to strain his eyes, though it was not clear what else he could do. She asked to be updated when he signed off work for the day. He reported his eyes were poor, and she responded that she presumed he was "not working today" for that reason.

34. After Christmas he was to upload his medical certificates. He asked about his sick pay, and was told he would need to check the policy, but he had probably exceeded it for his length of service. The claimant said he would "have to put in a pay grievance as OH advised me before Equity (sic) act should cover me regardless of service". He asked for a further occupational health report and Ms Downer replied: "as part of your ARM (attendance review meeting) I will have to get a new OH report so will do so".

Return to Work Meeting 3 January 2023

35. There was a return to work meeting on 3rd January 2023. Anne Downer recorded that he suffered headaches and blurred vision, was taking steroids, and was going to be referred to rheumatology. He also said he could not work a full week. She noted that she would use this return to work meeting to "informally open ARM and request an occupational health report. The claimant said that he needed to leave work early, as he was driving to work, a one and a half hour journey. He would need to leave while it was still light. She noted concern that he was driving at all, also that he was "unhappy about reduced salary due to time off".

36. On the evening of the 4th January 2023 the claimant message that his eyes were aching and he was likely to log on from home the following day. Then on 5th January he emailed Anne Downer, and the other delivery manager Frank Akwari, about "a plan for the upcoming weeks to ease myself back into work and prevent another episode of sickness due to my scleritis". He had medical appointments the following Wednesday morning, and proposed to work from home that afternoon and the next day. He said plans might change due to the condition but "I would rather have a plan in place than let you guys down by not coming in". A planned office day might however turn into a working from home day because of the strain of driving in. On the 6th January he said he would sign in from home, as his eyes had been bad over the weekend. On the 13th January he logged in from home as it was " not safe" to be travelling with eye drops. Miss Downer suggested he dispose of some of the outstanding complaints.

37. The WhatsApp record shows further working from home at the claimant's initiative on the 23rd January, late arrival 31st January, a day off sick in February, and late arrival 15th, 23rd and 26th February.

38. This was in addition to an informal arrangement the claimant made with Ms Downer in February 2023 that he could, on a temporary basis, work from home on a Wednesday because his wife had just taken a new job which required her to be in an office on Wednesday, otherwise working from home, so he had to take the children to school and bring them home.

39. In March the claimant worked from home on the 3rd and 15th March, at his request, he was late on 16th of March with a red eye, and away from work on 17th March, asked to work from home 21st March because of a swollen eye, was told to take leave that morning and see how he was that afternoon, when he said he would log on from home. He was sick on the 27th March with a cough, and late on 28th March through traffic. Due to return from leave on the 14th April, he extended it by one day, due to jet lag, said he would log on from home on Wednesday (childcare), and see her in the office on Thursday. The following

week he went sick with eye trouble on 17th April, returning to work on the 25th April. He asked if two days of that could be booked as annual leave, to avoid cutting his pay that month if it was sick pay.

Second Occupational Health Report

40. In April 2023 Anne Downer received the further occupational health report. There had been previous attempts to get one, but he had missed two appointments. She was seeking advice on an underlying health problem causing frequent short term absences, in all 17 absences, totalling 103 days from September 2021. The OH adviser noted a problem with the eyes that flared up, without an established diagnosis, and random episodes of losing vision, headaches and dull pain in the eyes. The claimant had told the adviser that working on a laptop did *not* contribute to his ill health, and he managed normal life except during a severe flare up. The doctor was hopeful that ongoing treatment would reduce the risk of flare ups. In the meantime he recommended "flexibility with time off to attend treatment appointments if the only time available is during work time", and regular one to one management meetings. He would also benefit from regular short breaks as needed.

41. The WhatsApp record for April and May shows the claimant late for work on the 25th and 28th April and again on 4th May, delayed by sore eyes. On 16th May he worked from home saying the sun was too much to drive with sore eyes. On 18th May he left work mid-morning, apparently with eye pain. Next day he logged on from home, "rather than being sick again. Just don't wanna drive". On 22nd May he reported that he was going to work from home because he had pain in the eye and a throbbing headache, and was told: "don't work from home …Working on laptop can't help your eyes or headache" . On 23rd May he reported that he did not want to drive in, but would work in a dark room. Miss Downer asked what he was going to be doing - he responded he was not sure until he logged in. On 24th May he went sick with eye trouble, and again on the 1st June. On 24th June he asked to work from home but his absence was instead put down as annual leave. He was sick on the 27th of June.

Return to Work Meeting end June 2023

42. On the 30th June 2023 there was a return to work meeting. If Ms Downer had been indulgent until now, if perhaps sceptical that the claimant had enough to do when not working in the building, the worm was beginning to turn. She recorded that the claimant had now been told by a neurologist (Dr Nicolini) that he had cluster headaches. He said that his eyes themselves were fine, it was the headaches affecting them. There was a new treatment plan which included oxygen. Ms Downer recorded that she had told the claimant that she must send him a formal warning letter, to which he replied "do what you have to do". They had a discussion about working from home. She said that if he was sick, he would be recorded as sick, as eye pain or blurred vision and headache would only worsen looking at a laptop. She was also concerned about what work he was doing at home - the claimant reported: "not much unless there is a particular thing to do like the security swipe cards", which was not lasting all day. Finally, she noted: "asked Jas for flexi-sheets as he must owe me time".

43. Like most civil servants the claimant has the option of working flexi time, meaning that provided he works 37 hours a week between Monday and Friday,

he can choose his precise hours. He must record his working time on a timesheet - the flexi sheet – and if he is short in a working period he must make the time up. It seems the claimant never did this. Ms Downer's evidence was that she asked him "several times" for flexi sheets, knowing that he was coming in late a lot and working from home a great deal. This the claimants denies, but he agrees that he should have kept time sheets, that he did not keep time sheets, and that he did not submit them even when asked on 30th June. He does not dispute that he had on occasion said to Ms Downer: "I must owe you a few days", an acknowledgement that he was not doing a full day's work on a working day.

44. Following this meeting the claimant went sick on 6th and 7th of July, as the sun was too much for his eyes. On 10th of July he asked to work from home as he had done his back in, but his eyes and back were fine. Miss Downer replied: "not sure what you can do from home so suggest you staying sick", whereupon the claimant decided to come into work after all. On the 14th July the claimant asked if he could take annual leave because his back was bad. On 31st July his car had a flat battery and he asked if he could take sick or annual leave. (It is not clear why this required sick leave, he was put down for annual leave). On 6th and 7th August he asked to take leave because his son was unwell, on the 10th August he asked to go sick because his son had been up all night and now had a hospital appointment. On 16th August he was off sick, on 17th of August he reported he was not going to be in for the rest of the week; the sick note now showed cluster headache. He was then off sick, the latest note showing him due to return 14th September 2023.

The Claimant's Return to Work at the end of September 2023

45. In the week he was due to return, Anne Downer was on annual leave, not due to return until the 18th of September. Late on Sunday evening, 17th of September, the claimant emailed with an update. He said the medication was helping with his eyes, but he was still "getting debilitating headaches day and night". He would benefit from a phased return back to work "as my current episode is not in remission and I don't want to worsen their condition by resuming my full duties considering I have been off for a month". He proposed to work from home on Monday and Tuesday, then wait to hear from her "with a plan we could put in place going forward".

46. Ms Downer did not find time for a remote return to work meeting on the Monday or Tuesday. On Wednesday the claimant worked from home in any event because of child care. On Thursday 21st September he came to work, and she conducted the return to work meeting. He reported his symptoms. He added that there was ongoing stress at home, and a problem related to his wife and son's health problems. There was no stress at work. Though a lot better, he did not "feel reliable" at the moment. Miss Downer recorded that she had told the claimant: "working at home arrangement will cease as of 27 September - senior manager to be on site. It is getting quite busy every day. He will have to work out childcare arrangements." She was also sending him a letter inviting him to a formal absence review meeting.

47. The absence review meeting took place on the 28th September. It was unexpectedly short. After the introductions the claimant handed her a statement to read, and when she had read it, she adjourned the meeting to get advice. The three page statement opens that he is feeling: "highly emotional anxious, having

seen from his account that morning that he had been massively underpaid", following his recent bout of sickness. He had not been able to access his pay slip, and wanted to know what deductions had been made. He went on to say that the meeting: "marks the first real opportunity for us all to sit down for me to have your undivided attention and a proper conversation about my experiences and subsequent absences as result of my disability over the last two years". He complained of lack of consideration following his recent episode: "I have been made to feel that the current operation cannot accommodate my disability, an example, not being able to work from a different location, i.e. home, when I was suffering with my condition". He also complained that he had not had enough return to work meetings. On the recent meeting, he had hoped for "open dialogue" to work through reasonable adjustments, especially when he was in the middle of an episode. He had consulted "the cluster headache rep". He had learned that reasonable adjustments for cluster headaches could include access to a quiet room when needed, flexible working hours and homeworking, micro breaks for medication or meals, occupational health referrals, and time off for medical appointments, a well-ventilated environment, regular well-being meetings and disregarding disability related absences from the sickness policy. He did not think that the recommendations in the two previous occupational health reports had been "followed up suitably" . They had not been implemented - regular one to one meetings for continued support had not taken place. He wanted "a proper plan", giving as example that he was expected to resume his duties three days after the end of a prolonged period of sick leave. His disability was not being taken seriously enough.

48. Later that morning he went home, emailing that he was not in the right state of mind, had not slept and had a splitting headache. He would like to take the following day as annual leave. As he was about to start annual leave anyway, his next day at work was 9th October 2023.

<u>The September 2023 Pay Reduction</u>

49. It is correct that he was not paid in September 2023, and common ground that the money was restored without explanation in the October payroll payment. This was later investigated as part of his grievance. Shared Services, which handles payroll, indicated that calculations were made automatically using information imported on the computer, and although various possibilities were projected, there was no firm explanation. Annual leave and fit note dates are entered by managers on an automated system called SOP. It is clear that it was not as a result of any instruction from Ms Downer not to pay him. The tribunal has concluded the most likely explanation is that the claimant's period of sickness ending 15th of September 2023 had not been "closed off" on the payroll system in time to be computed and paid in the last week of the month, given that Anne Downer was not able to hold a return to work meeting with the claimant until he came to the office on 21st September. As a result it probably took the claimant over the number of days sick in the rolling programme to be eligible for sick pay. We were not told the date in the month by which the payroll cut off and was run, but know that many payroll systems run the calculations after the middle of the month. In his later grievance, the claim refers to a payslip dated 23rd September. The tribunal notes too that Ms Downer would not be able to raise this with Shared Services on his behalf, he would need to make an inquiry direct. It seems the claimant did not do this.

50. On 9th October the claimant approached PCS trade union to ask about joining.

51. On the same date Ms Downer explained to her HR adviser the difficulties she experienced managing the claimant's attendance and why she was asking for advice. Attaching the claimant's written statement, she said: "he is now on nil pay every time he is sick and I feel he has taken umbrage at this as though it's my fault". They had had return to work interviews. She had raised concern about his eyes, as he drove in to work. Sometimes he had left early so as to drive home in daylight. She had given him all the working from home opportunities that he had asked for, though he had limited work to do at home. She had raised concerns about working on the laptop at home with his eye difficulties and headache. She had agreed to working from home one day a week for childcare reasons, but had now withdrawn it, as it was a busy operational site. She had been willing to give him dispensation on trigger points. Moreover she was upset: "as I think I've given him more than I should have, including days off when he asks, working from home when he asks. He has not submitted a flexi sheet in the time worked here although I have asked several times. He does not arrive until after 10:30 in most mornings and will leave 1630 if not before. He flippantly knows he owes me, as he suggested I remove a couple of days leave from him to compensate, which i've not so far". She also attached the last two occupational health reports. What adjustment could she offer that she had not already?

Third Occupational Health Report

52. On 11 October she arranged a further occupational health review**.** The Occupational Health adviser's report of the 31st October 2023 notes that the claimant had advised he had had chronic headaches and migraine-like symptoms over last 18 months. In June 2023 had been he had been officially diagnosed with chronic cluster headaches. He reported: "his condition is worst at night times although he suffers it constantly throughout the day. He reports that when his symptoms are severe he is able to manage it while working remotely as he has all the equipment he needs to manage his condition at home, should he be in the office he struggles". He was awaiting oxygen therapy, which he would need when his symptoms were severe and that would not be appropriate for the office. There is no mention of the eyes.

53. Management should consider remote working "while he commence". It was also noted that the claimant had said that the contents of the referral for form were "all false". He had had no support at work, and recommendations and previous OH reports had not been implemented. The claimant believed he could continue in his role remotely while he manages his symptoms on the days he suffers severe flare-ups. The adviser's opinion on sickness absence in future was that people with cluster headaches are nearly twice as likely to take time off work as those without, and it might depend on several factors such as the severity of symptoms, frequency of attacks, and the individual's overall health and coping mechanisms. It was for the employer to determine what level of adjustments could be accommodated in relation to business and operational needs. The adviser added that his symptoms were "exacerbated by the ongoing work related stress issues". The employer could consider remote working should he develop flare-ups of his condition. They should consider a DSE (display screen equipment) assessment at home and in the office, so he could have a laptop and a monitor at home, a screen overlay, and screen resolution. RSI guard software

was recommended for further support. Intermittent breaks should be considered, as prolonged screen use could exacerbate his condition. A stress risk assessment was also recommended. One to one support with management should continue.

The Grievance

54. When the claimant returned to work on the 9th of October, he accessed Anne Downer's Outlook calendar to enter a meeting with her. He saw she was due to meet the HR adviser on the 11th October. He then clicked on the attachment to this diary entry and read the letter she had sent to HR. He was later questioned about doing this, as it was marked 'official sensitive'. In evidence he said a pop-up would come up, which was not shown on the screen shot in the bundle, giving his name. We doubt this.

55. The claimant decided not to book a meeting with Anne Downer. Instead, on 26th October 2023 he submitted a grievance about her.

56. The grievance is about :"the way in which I have been discriminated against due to my disability". Specifically, he complained about the telephone call from Ann Downer on the 20th September asking why he was not in the office, as a result of which had come in, reluctantly, on the 21st September for the return to work meeting. "I was reluctant to come back to work without a proper plan in place because of this repetitive pattern of behaviour and lack of support from my employer was a vicious cycle". Her tone was "sarcastic". He then had "a formal attendance meeting for the first time in two years", (the 28 September meeting) and he suffered a panic attack the night before. On return from annual leave (9 October) he was told she not yet heard anything from HR about his position. He revealed that he knew she had delayed contacting HR, because he had read the letter on her calendar. His disability was not being taken seriously as he was expected: "to struggle through full length working days after having been off for a month".

57. He complained that other staff at Westminster Magistrates Court worked from home, and he had, one day a week, so it was feasible. He considered he was being singled out. He did not understand how his absence had affected his sick pay because they had never had an absence review meeting. He had not been managed for two years. There had not been regular one to one meetings. He had also had to wait a month to find out what was happening about his pay. He concluded saying: "I'm still coming into work while suffering with my disability, I am not at all happy at the way I have been treated and as yet, no plan nor adjustments have been put in place for two years".

58. Despite what he said about still coming in to work, next day he went sick with stress and headaches and did not return for 12 months.

The WAP Wrangle on Working from Home

59. Allison Aedy acknowledged the grievance, asked the claimant to submit it on the correct form for uploading, and undertook then to get it allocated to an operations manager for action. In the meantime she was happy to continue with his Wednesday working from home while they went through the grievance procedure, and then they could discuss it further. She was not however happy

that he worked from home with cluster headaches or any eye condition, as staring at a laptop would not be the best course of action. In those circumstances they would have to register sickness absence when he stayed at home.

60. On 3rd of November the claimant prepared the document called a workplace adjustment passport (WAP). Its purpose is to "record all your workplace adjustment requirements that are agreed with your line manager". He described having chronic cluster headaches, with intense pain during an attack. He listed "common difficulties associated with my disability", (although it is not clear to the tribunal that he himself suffered from all these difficulties, as some have not been mentioned elsewhere). The adjustment he wanted was "the ability to work remotely without judgement. To be able to manage my condition long term and prevent relapses I would require the ability to work a set number of days from home". The additional stress of travelling to and from work five days a week triggered his condition.

61. When in the office he needed a well-ventilated space, not be seated under bright lights, and a private place for when he needed oxygen therapy. He also asked for a DSE (display screen equipment) assessment at home and in the office, a screen overlay, screen resolution and ergonomic chair. He wanted to manage his working hours flexibly during an episode: "e.g. regular breaks, flexible starting and finishing times". He wanted regular well-being checks, assistive software and noise-cancelling headphones. It was important that he had a plan, "to provide clarity and Peace of Mind, allowing me to manage my disability, minimise financial impact and do my job well while leading a normal life. After long periods of absence I would like to have a phased return in place to prevent relapses."

62. He told Anne Downer he could discuss this remotely or in person. He asked if he was being treated as sick since the 27th of October, or "placed on disability leave pending the outcome of my OH report/ WAP". She replied that they would have to discuss it in person, so she could be clear what was required. Disability leave might be a consideration once they had established what equipment was required and the speed with which it could be ordered and delivered.

63. Disability leave is identified in the respondent's policies as "time off under special leave for assessment, treatment and rehabilitation related to a disability". This might be paid time off during working time, or absence while a reasonable workplace adjustment was being put in place. It could only be used where the employee was otherwise well enough to be working. It was not to cover sickness absence: "even if that absence relates to a disability or long term condition". Thus the importance for the claimant was that when sick he was not paid, but on disability leave (as on a phased return) he was.

64. Ms Downer told the claimant she would discuss it with the HR adviser, but disability was leave was not an option. If he was well enough to come to work, she was happy to meet him and they could discuss the way forward and get an order in for the equipment. The claimant remonstrated that he was fit for work, but he wanted to work from home. He did not want to come in.

65. We can see an e-mail on the 23rd of November 2023 Ann Downer (due to hold a formal absence review meeting with claimant and his trade union representative the following day) sent to HR, that she reported the claimant was

still on sick leave, although he had told her he was fit to attend, but wanted disability leave while she arranged to supply the equipment recommended by occupational health. She said: “I am not considering disability leave until such time the grievance brought against me has been finalised”. One of the pieces of equipment was available, she had ordered and was waiting for screens for the monitors, but she was sure “he could attend and limit his computer use” while they awaited delivery. Once he was at the workplace she could arrange the bespoke DSE assessment, and continue with his WAP application. “My concern is the working from home element as operationally we need managers on site”.

66. At the formal absence review, reviewed his absences over the previous 12 months, the claimant asked AnnDowner: “why haven't they just not been put in place? I am ultimately the one that is suffering”. She replied that for the RSI guard had been ordered and installed, he just needed to load it on his laptop. They had a chair, the screens were expected in the next couple of days, but he needed to be at his desk for the DSE assessment. He wanted a private room to administer oxygen (which he had just started). Ms Downer found him a room that had an en suite bathroom adjacent to his workplace. If he wanted to indicate he would come back to work next week she would get an assessor in. They could agree what other work he could do until all the IT equipment was in place. “Let me know if you're going to be in on Monday and we can get cracking”. Working from home could be discussed face to face when the claimant was back in the workplace. The claimant’s response was that he could come to work but he needed “some sort of plan or assurance or support” for when he was “going through my condition”.

67. After the meeting the claimant emailed with some questions about adjustments. Miss Downer replied point by point, repeating equipment had been ordered, he needed to be in work to install the RSI guard on his laptop, he would not have to work on the computer until he had done that and the screen had arrived. They could then do the DSE assessment. In the meantime they could agree shorter days on site. If he returned on a phased return, he would be paid, so he would not need disability leave. On working from home, she made clear that she wanted to know whether he wanted a regular pattern or just when he was having an episode, and if an episode, was it right that he could do computer work then? On the other detail in the OH report, they could reposition the desk to avoid overhead lighting, he was already in an open plan office, could he state if he needed a window to open? The claimant continued to be absent on sick leave with stress (not headaches).

Grievance Investigation

68. Alison Aedy commissioned Dee Kavanagh to investigate the grievance and Grant Morris to make a decision on it. Dee Kavanagh Is trained and experienced in grievance and counter fraud. She was asked to investigate the claimant’s grievance because it was “complex”.

69. Ms Kavanagh interviewed the claimant and his trade union representative on 21st November 2023. We have a detailed minute, which was based on a recording and agreed by the claimant. We propose to discuss some of the complaints about this meeting in more detail when discussing the specific issues below, but note for the present that the claimant said in the investigation meeting that he *no longer had issues with his eyesight* and therefore considered he

should be allowed to work from home.

70. Next day the claimant approached ACAS for early conciliation. He presented this claim on 28 November 2023.

71. On the 28th November Dee Kavanagh interviewed Anne Downer. Ms Kavanagh then reviewed documents, including spending several days collating the claimant's WhatsApp exchanges with Ms Downer and studying the pattern. On 28th December she completed her grievance investigation report and sent it to Grant Morris.

72. The report covers 23 pages, plus 21 annexes of the documents she relied on. The investigator did not accept that adjustments had not been made. Requests to work from home were made ad hoc, but nonetheless agreed, on 30 occasions. His condition had been discussed - there were 9 written records of return to work meetings, and two occupational health reports. He had been allowed paid time off for all medical appointments. He was more generally unreliable, with 46 unplanned absences unrelated to his medical condition. The occupational health adviser reporting in October 2023 appeared ignorant of the claimant's role, which in Dee Kavanagh's view was incompatible with extensive working from home, as there was not enough administrative work for his contracted hours. Calling in sick but well enough to work from home was "disruptive to working operations and to legal and courtroom support policies".

73. As well as investigating the grievance, Ms Kavanagh also provided a report on her "extended scope of investigation". In a separate section, she recorded 5 potential misconduct matters relating to timekeeping, where he was not keeping flexible working timesheets, when he was leaving work early, coming in late, and not making up the time. He knew he had to do this, as part of his job was to see that his own staff did it. A second potential misconduct matter was failing to comply with this contracted hours, and concealing this from his managers. He was also in breach of security policy by reading the "official sensitive" document opened on Anne Downer's calendar. He had also shared passwords with colleagues, which he did when he was off work unexpectedly and they needed to access documents he had drafted, contrary to IT security. Count 5 was failing to comply with sickness reporting procedures by using WhatsApp and not the telephone. She suggested that on the first three there was enough evidence to proceed straight to a disciplinary hearing; the other two needed further investigation.

Grievance Outcome

74. Grant Morris sent the report to the claimant on 12 January, and they met to discuss it on 19th January 2024. A week later he produced a written grievance hearing outcome. In the meantime he had asked Dee Kavanagh to dig deeper into the pay issue.

75. On pay, he said the exact reason had not been discovered as the system did not show the date the sickness closure entry was made, but it was not because of Ms Downer's actions. It might be because of an overlap when the sickness absence had closed after the pay amendment date for September, but once it was closed, the system would automatically pick up the closure and reinstate the pay.

76. On the attendance management policy not being followed, he agreed, informal discussions about reasonable adjustments had not taken place, but the claimant had not submitted a workplace adjustment passport until the 3rd November, and it had not been discussed with him since because he had been off sick since then. Ms Downer's failure to follow the attendance management policy was "with the best intentions". Initially this was no disadvantage to him, as he was not then subject to formal attendance management procedures. If the correct process had been followed, he would probably not have submitted this grievance, but "due to the number of absences related to sickness, it is highly likely that Ms Downer would have initiated formal attendance management procedures" against him. This part of the grievance was therefore partially upheld.

77. His manager had been very "accommodating" with his numerous informal requests to work from home, often at short notice, for several different reasons. The absence of a delivery manager at such a high profile court requiring attendance on site "would have put a significant additional pressure on Ms Downer and the other delivery manager at the court and in my opinion was not sustainable". Some of the equipment sought as adjustment had been sourced, but other adjustments required him to be in the office He also agreed that if the claimant was unfit for work due to a cluster headache, he should not be working from home, it should be recorded as sick leave. He rejected the claimant's suggestion that there was a breach of data protection in the attachment inserted on Anne Downer's calendar. It had the appropriate protection markings in line with departmental policy. As for Dee Kavanagh's recommendations of further process for alleged misconduct, that was outside his role. This would be referred to his cluster manager to consider.

78. He recommended the line manager keep in touch with the absent claimant as required by the policy; when the claimant returned to work there should be a return to work interview and a DSE assessment of his workstation. At that stage too there should be discussion with the London HR Business Partner about potential opportunities for a managed move, as the claimant considered his relationship with Anne Downer had irretrievably broken down and mediation not an option. The claimant should contact Shared Services with a service request for a full written explanation of his pay and entitlements. Recommendations would be made to Ms Downer about her work practices.

Grievance Appeal

79. The claimant appealed this grievance decision. Thirza Mullins held a hearing on 22nd March 2024. On 26 April 2024 she rejected the appeal.

Other Developments

80. In the meantime, Alison Aedy had commissioned Charlotte Newman to investigate all the disciplinary issues. On 16th February 2024, Phil Waites, the trade union representative, asked for the disciplinary process to be paused until the claimant returned to work. Keep in touch meetings continued with a different line manager, and a managed move to a different post within the Ministry was arranged, to which the claimant returned on the 8th October 2024. Not long after he resigned. This is the matter for the second tribunal claim.

Relevant Law

81. Disability is defined in section 6 of the Equality Act 2010. A person is disabled if he has a physical or mental impairment, and the impairment has a substantial and long-term adverse effect on (his) ability to carry out normal day-to-day activities. Employment tribunals should assess the evidence to make findings on: (1) whether the claimant has an impairment (2) whether the impairment has an adverse effect on his ability to carry out normal day-to-day activities and (3) whether it is substantial, meaning more than trivial - **Aderemi v London and South Eastern Railway Ltd (2013) ICR 591**. These questions are to be decided by the employment tribunal based on all the evidence – **Adeh v British Telecommunications plc (2001) l IRLR 23**, and "it is left to the good sense of the tribunal to make a decision in each case on whether the evidence available establishes that the applicant is a physical or mental impairment with the stated effects." The test of disability is a functional one – **Ministry of Defence v Hay (2008) ICR 1247**. It must be assessed as at the time of the discriminatory acts alleged. If an illness is being treated, the tribunal must look at the deduced effect, without treatment.

82. Paragraph 2(1)(b) of Schedule 1 to the 2010 Act defines long term, so far as material to this case, as "likely to last at least 12 months". "Likely" in this context means "could well happen": see **Boyle v SCA Packaging Ltd. (2009) UKHL 37.** The question, therefore, is whether, as at the time of the alleged discriminatory acts, the effect of an impairment is likely to last at least 12 months. That is to be assessed by reference to the facts and circumstances existing at the date of the alleged discriminatory acts. A tribunal is making an assessment, or prediction, as at the date of the alleged discrimination, as to whether the effect of an impairment was likely to last at least 12 months from that date.

83. The respondent does not dispute the disability issue and the tribunal accepts that on the evidence the claimant's recurring symptoms of headache and sore eyes amounted, by early 2023, to disability. When suffering, he was substantially impaired from carrying out normal day to day activities.

Discrimination arising from Disability

84. Section 15 prohibits "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, an
>
> (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.

85. Both here and in victimisation claims (see on), tribunals have to consider whether the action complained of was "because of" discrimination. Tribunals must look not at whether the discrimination would have occurred "but for" something arising from disability, or a protected act. Instead, they must look at the decision maker's reasons for the action complained of - **Robinson V DWP 2020 EWCA Civ 859,** or **Nagarajan v London Regional Transport 1998 IRLR 73 CA –** at what operated on the decision maker's mind

86. It may be possible to make a finding of fact about the reason. A reason is a set of facts or beliefs which calls on employers to act as he did – **Abernethy v Mott Hay and Anderson**. But because people rarely admit to discriminating, may not intend to discriminate, and may not even be conscious that they are discriminating, the Equality Act provides a special burden of proof. Section 136 provides:

"(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."

87. How this is to operate is discussed in **Igen v Wong (2005) ICR 931**. The burden of proof is on the claimant. Evidence of discrimination is unusual, and the tribunal can draw inferences from facts. If inferences tending to show discrimination can be drawn, it is for the respondent to prove that he did not discriminate, including that the treatment is "in no sense whatsoever" because of the protected characteristic. Tribunals are to bear in mind that many of the facts require to prove any explanation are in the hands of the respondent.

88. **Anya v University of Oxford (2001) ICR 847** directs tribunals to find primary facts from which they can draw inferences and then look at: "the totality of those facts (including the respondent's explanations) in order to see whether it is legitimate to infer that the actual decision complained of in the originating applications were" because of a protected characteristic. There must be facts to support the conclusion that there was discrimination, not "a mere intuitive hunch". **Laing v Manchester City Council (2006) ICR 1519**, explains how once the employee has shown less favourable treatment and all material facts, the tribunal can then move to consider the respondent's explanation. Tribunals are reminded in **Madarrassy v Nomura International Ltd 2007 ICR 867**, that the bare facts of the difference in protected characteristic and less favourable treatment is not "without more, sufficient material from which a tribunal could conclude, on balance of probabilities that the respondent" committed an act of unlawful discrimination". There must be "something more".

89. **Shamoon v Royal Ulster Constabulary (2003) ICR 337** discusses how, particularly in cases of hypothetical comparators, tribunals may usefully proceed first to examine the respondent's explanation to find out the "reason why" it acted as it did. **Glasgow City Council v Zafar 1998 ICR 120**, and **Efobji v Royal Mail Ltd 2017 IRLR 956**, reminded tribunals that the respondent's explanation must be "adequate" but that may not be the same thing as "reasonable and sensible".

Duty to Make Reasonable Adjustments

90. Uniquely among the protected characteristics, it is the duty of employers to make reasonable adjustments for disability, to enable the disabled to work. Section 20 of the Equality Act sets out three requirements.

91. The first is: "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". The second is a "requirement, where a physical feature 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". The third is a requirement, where a disabled person would, but for the provision of an auxiliary aid, be put 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 provide the auxiliary aid.

92. Section 21 then provides: .

(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.

93. "Requirement" and "policy" can usually be readily identified, "Practice was discussed in **Ishola v Transport for London 2020 EWCA Civ 112** as "the way in which things generally are or will be done".

Victimisation

94. Under the Equality Act 2010, workers are protected not just from discrimination and harassment because of a protected characteristic, but also from detriment if they complain of discrimination of themselves or others or assist in complaints procedures. Section 27 prohibits victimisation by A of B because –

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

95. In examining an employer's reasons in victimisation cases, we must heed the guidance on avoiding 'but for' causation, and also the cases that assist in victimisation and public interest disclosure cases particularly, where although the dismissal (or detriment) was closely associated with a protected act or disclosure, the employer's reason is argued to be something else. In **Martin v Devonshires (2001) ICR 352** the reason was not that discrimination was alleged but that the claimant by reason of mental illness did not understand that the allegations were unfounded, or that she should desist from frequent repetition of them, and that was the reason for dismissing, not that she alleged discrimination. However Tribunals should be careful not to deprive claimants of protection for, say, "intemperate language or making inaccurate statements". In **Panayiotou v Chief Constable of Hampshire Police (2014) IRLR 500** initial complaints were taken seriously, and eventually resulted in action, but the claimant kept complaining: dismissing him was not because he made disclosures, but because he continued to wage a campaign long after the respondents had noted what he said. Other cases distinguishing the reasons for dismissal or detriment from the protected act or disclosure are **Aziz v Trinity Street Taxis 1998 IRLR 204,** where although the secret recording made hoping to get evidence of discrimination was a protected act, it was held that the respondent's objection to covert recording of fellow members of the drivers' association, not any suggestion they had discriminated, was the reason for detriment, and **Khan v Chief Constable of West Yorkshire 2001 4All ER 824,** where delay providing a reference while tribunal proceedings were ongoing was held to be done to preserve his

position in those proceedings for the time being, not because they had been brought.

96. Detriment occurs where "a reasonable worker would take the view that he had thereby been disadvantaged in the circumstances in which he had thereafter to work" -**De Souza v AA 1986 ICR 514**, but an unjustified sense of grievance account could not amount to detriment" - **Barclays Bank v Kapur no2 1995 IRLR 87.**

Unauthorised deductions from Wages

97. Sections 13 - 30 of the Employment Rights Act 1996 prohibit employers from making deductions from workers' wages unless there is prior written authorisation in the employment contract or some other document, or by virtue of a statutory provision. A deduction is the difference between the amount 'properly payable' on any date, and the amount actually paid – section 13(3), but section 13(4) makes an exception "in so far as a deficiency is attributable to an error of any description on the part of the employer affecting the computation by him of the gross amount of any amount properly payable to the worker on that occasion".

98. By section 24, where a tribunal finds a claim well founded, it shall make a declaration and may make an order for payment. Section 24(4) also provides that where a declaration is made under subsection (1), it may order the employer to pay to the worker (in addition to any amount ordered to be paid under that subsection) such amount as the tribunal considers appropriate in all the circumstances to compensate the worker for any financial loss sustained by him which is attributable to the matter complained of.

The Claims – Discussion And Conclusions

Unauthorised Deductions from Wages

99. The facts indicate that the failure to pay wages at the end of September 2023 was because the closing off of the claimant's sickness absence that month came too late to make the payroll run. As a result, the "computation... of the gross amount of any amount properly payable to the worker" was in error. When his absence was closed off is obscure, but we can see that the claimant was not in work on 15th of September, when he saw his GP, he was at home on 18th and 19th on his own initiative, he was not at work for childcare reasons on the 20th of September, and only came to work on the 21st September when the return to work meeting was held, at which point, presumably the information could then be entered on the computer. That this is an automated payroll is shown by the restoration of the correct amount in the October payroll without further intervention. The tribunal concludes that the section 13(4) exception means that there was no "deduction" for the purpose of the Act. Therefore we make no declaration.

100. Had we concluded this was not a calculation error, we would not have thought it appropriate to make an award for financial loss under section 24. There is no evidence that the claimant suffered financial loss because he was paid this amount a month later. He was asked in the grievance meeting what resolutionhe wanted for ths part of his grievance. He did not say he had suffered financially, just that he wanted an explanation why he was not paid in September, because "I

had a lot going on outside of works in regards to my remortgage application and that not going through and then consequently, arguments with my wife", but it was not explained that he did not or could not renew the application when the money came through in October.

Discrimination because of something arising from disability (Lst of Issues 3.3.1-3.3.8

101. The "something arising" is absence from work. As set out in the findings of fact, a great deal of absence from work, though not all, was because of the pleaded disability, chronic cluster headaches, of which the respondent had notice on the 30th June 2023. Until then, it was believed that his absence was due to an eye condition which might also cause headache, which the claimant said prevented him from driving at night, though not from using a computer.

102. We considered the complaint (3.3.1 (a) and (b)) that the claimant was regularly made to feel guilty and under pressure to attend work. When the claimant sent his late Sunday night e-mail on 17th September about his proposals for the following week, Ann downer replied: "really busy day and ideally you would have been in tomorrow, but I have meetings in the morning so will contact you in the afternoon to complete your RTW". In the event the claimant did not come to work the following day, so the meeting had to be put off to Thursday. The tribunal did not consider that this message was unreasonable. His fit note to cover his recent absence had run out the previous Thursday. He left it until late on Sunday night, just before her own return to work after a period of holiday, to tell her he was not coming in. It is understandable that after a period of holiday there would be matters that could not be put off and required meetings. It is excusable that her tone may have been a little brisk, the more so against the background of their conversation on the 30th of June about working from home, when she had made clear that if he was had too much eye pain, blurred vision or headache to come to work, he should not be working at a laptop and in any case, there was not enough computer work for a delivery manager to work a full day at home - and when he had not, and did not thereafter, provide flexi timesheets as requested, which must have forfeited him Ms Downer's hitherto generous goodwill. In the interim, from the 30th June to 16th August he had considerable intermittent absence unrelated to eyes or headache. He had then not come to work for two days after he was fit to work, but "working from home", which meant he would be paid. Taking a firm line at this point was a reasonable management approach.

103. The second occasion of being made to feel guilty and under pressure, was being told on 21st of September that his childcare arrangement to work from home on Wednesdays was to cease immediately. It did not in fact cease immediately, he was given a weeks' notice, when he said that there was delay arranging alternative care, he was given an extension, then he was on holiday, then he went sick, and in response to his grievance Ms Aedy restored the concession until the grievance was resolved. As for unfavourable treatment in telling him it was to cease, almost certainly the decision was made because of his absence from work, and his decision to work from home on other occasions whether related to headaches, his eyes, or family reasons. On a temporary basis, had he had been at work doing the full delivery manager duties on 4 days of the week, there might have been enough computer work to justify this. As noted, the claimant had already told Ann Downer on 30th June that there was not much to do at home. He also told Grant Morris at the grievance meeting on 19th of January 2024 "I understand I have to be in the office most of the time". When he

was not in the workplace on other days of the week, it was no longer sustainable. It is also the case that it had been a temporary concession. Had the claimant made a formal application for flexible working, it may not have been granted, given the nature of the job. Ms Downer and the other delivery manager had been having to cover his work in his absence from site.

104. Insofar as the claimant was made to feel guilty and under pressure, the respondent asserts that their legitimate aim was to ensure that the responsibilities of a delivery manager were discharged, to ensure the efficient operating of Westminster Magistrates Court, but this required a delivery manager to be on site most of the time, which is not compatible with working from home at the frequency the claimant did on his own initiative and wanted to continue doing without having to ask (the "plan"). We consider that asking the claimant to come in for a return to work meeting, and removing (on notice and with stated reasons) the temporary and informal work from home concession was a necessary and proportionate way of achieving this aim.

105. The claimant says that he was treated unfavourably by not having the same opportunity for regular career development conversations as colleagues, with only one such conversation with his line manager over two years. He was offered a mentor who discussed his work with him and he had declined further assistance. He had the opportunity to take up training packages offered by respondent on the Internet. He had been asked to take matters forward by concentrating on the new Common Platform, so he could assist colleagues with the new procedures, but he did not take this forward. There is no evidence that the claimant considered he should have more career development conversations (which he could have had with the mentor assigned), or was asking for more. The tribunal does not accept that he was denied career development opportunities compared to colleagues, let alone that this was because of his absence pattern.

106. Next, the claimant asserts that he was treated unfavourably when the respondent failed to act on the recommendations of the occupational health reports.

107. The August 2022 report recommended only one adjustment, namely that they adjust the sickness absence triggers. These are the triggers for instituting a formal attendance review policy which could become a disciplinary issue. It has not been argued that this concerned whether he should or should not receive full sick pay, half pay or no pay. As a matter of fact, the claimant was not subject to attendance review management until 2023 at the earliest, and then only so that an occupational health report could be commissioned. The tribunal cannot conclude on the evidence provided that the respondent did not adjust the sickness absence triggers. He had been treated very leniently for his record of lateness, absence at short notice for a variety of reasons, unscheduled working from home, and the ARM, followed by FARM, process only began in September 2023 (and had to await the claimant handing in the letter from the neurologist.

108. The April 2023 occupational health report recommended only that he be given time off to attend daytime medical appointments. He was.

109. The October 2023 report made a number of recommendations for equipment at home and at work. The claimant stated that he had the equipment he needed at home. Ms Downer ordered the additional equipment for the courthouse, and had a spare screen. The RSI guard software had to be downloaded by the claimant himself. She had commissioned a specialist DSE assessment, but it could not be carried out until the claimant came into work so that his position in relation to the equipment could be assessed. She had arranged a room for use for treatment to manage headaches. The lighting was to be adjusted. It cannot be said the respondent refused to implement these adjustments. What was not implemented was working from home, and as is clear, that was because as a delivery manager there was insufficient work that could be done at home. In other words, it was not a reasonable adjustment. It could also be said that it is not clear why it was a reasonable adjustment to work with cluster head headaches at home but not the courthouse. Finally, the claimant wanted a plan but it was not clear whether he wanted a regular day or two at home, or permission to work from home if there was an "episode" of headache, which was presumably unpredictable.

110. Neither the claimant nor the occupational health advisor proposed as a reasonable adjustment that he be assigned to other work where working from home would be feasible. In fact the adviser does not appear to have known much about his duties.

111. Next (3.3.4) , it is said that the respondent treated the claimant unfavourably by not acting on his requests for adjustments in four emails. On the 10th of July 2023 he asked how much annual leave was left, as he needed tomorrow off because his seat was unsuitable and caused pain. It is not specified, but this must relate to his back pain at that time. He was told he had 9.5 days left, he replied that he had an appointment on Thursday at rheumatology, so he would take a half day's leave on the Thursday afternoon. It is not clear what adjustment the claimant was asking for. He did not ask if he could work from home on the Thursday afternoon, though he may not have asked because it is clear from the notes of the meeting 12 days earlier that he agreed there was "not much" to do at home. The second e-mail is 15th of August 2023. The claimant sent two pictures of his face to indicate red eyes, adding he had a dull headache, was unlikely to be able to remain at work all day, it was probably an accumulation of a stressful couple of weeks. Then: "obviously there is no real plan in place for me when I have these episodes, not being able to WFH when I am like this is going to therefore probably result in me being marked down as sick which isn't ideal due to the financial implications it may potentially have, so we'll just have to see how this episode plays out..." The next day he went sick until 14th September, and did not attend the workplace until the 21st September. It is hard to see how there could be a discussion of working from home in those circumstances until the discussion that did take place on 21 September when he was told that the workplace was now so busy that the childcare work from home arrangement must cease. The next meeting was on 28th September, when the claimant presented his prepared statement to the effect that he needed a plan in place allowing him to work from home when suffering headaches. He then went sick and did not return for 12 months, effectively precluding any discussion. The third e-mail the claimant is said to have treated him unfavourably by failing to heed is dated 17th September 2023, the one sent late on the Sunday night before Ms Downer returned from holiday. In this e-mail he said he was getting headaches day and night, managed with medication as instructed, he was feeling better but would benefit from a

phased return back into work (which would mean less working but being paid) as he did not want to worsen his condition. He was going to work from home on the Monday and Tuesday, “and then wait to hear from you with a plan we could put in place going forward”. This is another reference to wanting to work from home as an adjustment for headaches. As discussed, there was scarcely an opportunity for a discussion, and not answering yes to the plan of working from home he proposed related to management concern as to how he could work from home (but not in the workplace) if he had headaches, and, in any case, there not being enough work to do off site in any event. Favourable treatment would have involved having a discussion, and then, presumably, granting what he wanted. Not having enough work to do off site is unrelated to his sickness absence, but a feature of being a delivery manager. Not having a discussion was related to his not coming to work. The last email of this group (see list of issues 3.3.4) is an e-mail the 20th of October. There is no such e-mail in the bundle and the claimant has not before complained of its absence. We wondered if it was the 26th of October, which is his grievance. If so, it was properly investigated and answered, not unfavourable treatment, and not related to his time off work because of eye pain or headaches.

112. There is a complaint of failing to grant him disability leave while reasonable adjustments were put in place. Disability leave (a provision for paying a disabled person if there was delay implementing adjustments which would enable them to work) could not take place until he submitted a WAP. When he did this he was off sick. Some of these adjustments, for example the DSE assessment, could not be done until he was at work. The respondent followed its own policy. It cannot be said that this was unreasonable.

113. It is said that there was delay in concluding the grievance procedure because of absence from work in consequence of disability. Both the investigator and the decision maker were managers with other duties. The grievance was submitted the 26th October. Relevant people have been interviewed by the end of November. There were a lot of documents to go through to understand the sickness absence pattern. The report was completed within two months. Allowing for the intervention of the Christmas break, a meeting on 19 January 2024 and a written outcome a week later was not unreasonable delay. In any case, nothing suggest that any delay had anything to do with absence from work arising from disability.

114. At 3.3.7, the claimant complains he was allocated statutory sick pay only from January 2024, and no pay at all from the 14th of April 2024. Such sick notes as we have show that he was absent through stress, not absence related to headaches or eye strain. The absence that caused the reduction in sick pay was not something arising from disability. The respondent followed their own policy on sick pay. This was unfavourable, but it was not because of something arising in consequence of disability.

115. The last item is that the claimant’s manager “or another point of contact” failed to make contact for welfare purposes, following the respondents own attendance management processes. Neither the grounds of claim nor the claimants witness statement spell out what did or did not happen after the claimant went sick in September 2023. The claimant did not ask any of the respondents witnesses about this allegation. There was plenty of contact before September 2023. At some point Ms Downer was replaced as KIT (keeping in

touch) manager by a person called Baljit, there were meetings, and a managed move was arranged. It is possible that keeping in touch meetings did not take place after the formal absence review at the end of November but we do not have the facts. It is possible that the process got lost because of the grievance and then the grievance appeal come out but this is speculation. The claimant has not shown that there was unreasonable treatment, or the if there was, but it was because of absence from work as something arising in consequence of the pleaded disability. "Because of" means that the claimant's absence through disability was the reason for not keeping in touch for a period, if that is what happened. The respondent operated other processes by the book, and it seems more likely that any deficiency is administrative error.

Failing to make reasonable adjustments for disability

116. The claimant relies on provisions, criteria or practices as follows:

117. (1) a requirement to work in the person in the office during fixed hours, which put him at substantial disadvantage because he had to do this when suffering flare ups of his condition, alternatively, having such a practice made him feel guilty and stressed when working from home. He asserts it would have been reasonable to adjust this by adopting a plan allowing him to work from home, and work flexible hours during flare ups.

118. The tribunal finds that the claimant never made clear what his plan was for working from home. At times it was to have regular work from home days to alleviate stress that might bring on headaches, at other times it was to work from home when he had a headache. The former is unusual. Nothing in the pattern of headaches considered by the doctors or occupational health suggests that certain behaviour triggered them. This substantial disadvantage is also hard to understand. If he had bad headaches he was unlikely to be able to work at all, at home or in the courthouse. As for working from home whenever he had a headache, the respondent was rightly concerned that if he had a headache he should not be using a laptop at all, rightly concerned that he did not have enough work to do, and certainly suspicious that he was not working his full hours at home, given he was not making up time when he was late at the office. In any case, up to June 2023 Ms Downer had been lenient in permitting him to work from home when he said he was going to. It is noteworthy that the first sick pay reduction came after a pattern of absence that had more to do with other illness or domestic pressures rather than eyestrain or headache.

119. In any case, the adjustment he wanted was not a reasonable one for a delivery manager. Up to and including the grievance process he never suggested that he should be moved to other work that could be done from home. It was Grant Morris who recommended a discussion with an HR business partner about a managed move, following a suggestion by the trade union representative which emerged from Mr Morris explaining to the claimant why he, as delivery manager, could not contemplate allowing a court usher to work two days from home.

120. (2) working in an open plan office. The substantial disadvantage was that he would have had to use oxygen in the presence of others (until November 2023 he did not have any oxygen close brackets. The respondent was prepared to adjust it and found a small room, with ensuite facilities to ensure privacy which he could use as and when he wanted.

121. (3) working in an office with bright overhead lighting, the substantial disadvantage being that this could bring on headaches. The respondent was prepared to move the claimant's desk to avoid this.

122. (4) Failing to follow the attendance management policy..

123. It is harder to see how there was "a practice of failing to follow the attendance management policy". They had such a policy. It might be said that by not following it, in the claimants case, until the spring of 2023, Ms Downer had such a practice. The claimant says he was put at substantial disadvantage because she did not convene a meeting when he reached attendance trigger points, with results he did not have "the support required" and suffered financial loss. Had Ms Downer commenced the meetings required for attendance management earlier, it is not clear what support she could have given it would help the claimant attend work more regularly. That will probably have increased the stress the claimant suffered. It may well be that her sympathetic approach to the claimant's absence and his poor time keeping encouraged him to stay away when he could, as there did not seem to be consequences, but he knew his record was poor, and he knew the consequences for his pay, which probably led him to seek work from home, even when as he more than once agreed there was little to do at home. He also knew he had to keep timesheets, not least because he had to manage others' time. If he considered he was being allowed to get away with it, that is not a substantial disadvantage because of disability. Had she instituted the policy more firmly, however, it is hard not to see that the result would have been the claimant came under more pressure, would have been disciplined, and would have been compelled to work from the office or go sick, with financial consequences, and, possibly, if this continued, warned and eventually dismissed. He would still not, as a delivery manager, have been permitted to work from home whenever he liked, or on any regular basis. Grant Morris's recommendation that Ann Downer have additional management training was probably directed to the respondent's interests in seeing that the workforce came to work regularly and earned their pay, rather than any finding that the claimant had been put to substantial disadvantage.

124. There is an additional claim of failure to provide screen protective software as an auxiliary aid. The software was provided, but only the claimant could download it to his laptop (which required his password), and he did not go to work to do this. There was no failure on the part of the respondent.

125. The claim of failing to make reasonable adjustment for disability does not succeed.

Victimisation

126. This claim concerns the conduct of the respondent towards the claimant following the grievance of the 27th October 2023 alleging disability discrimination, which is agreed to be a protected act within the meaning of section 27(2).

127. Allison Aedy replied to an e-mail the claimant had sent on 30th October 2023, in which he said it was wrong that he was expected to come into work "during an episode" to stare at a screen when he was not allowed to do this at home, and that the respondent was happy for him to have the additional pressure of travelling to and from work. She said: "as you drive to work, I would hope that you're not experiencing any episodes and if you were, then you should be at home". She also said she was concerned for his safety and if he was not well

enough to attend work because he was experiencing cluster headaches and issues with his sight, they would not agree to him working from home, he should be off sick. The tribunal concluded that she did not say this because he had complained of disability discrimination. They would have said exactly the same to an employee in these circumstances who had not alleged discrimination. He was being urged to submit his WAP as soon as possible "so we can move you onto disability leave and get any adjustments in place". The tribunal sees this as a statement of policy, directed to get the claimant what he wanted, which was to be paid while he was not coming into work, and it was not to his detriment.

128. The next matter alleged as detriment (5.2.3) is that when he emailed Ann Downer on a Friday evening early in November saying he would be happy to discuss the WAP with her remotely or in person, but asking if he had been put down as sick since the 27 October 2023, or placed on disability leave pending the outcome of the occupational health report or WAP, she had replied just that disability leave was not an option for her to consider but she would raise it with her HR advisor, in the meantime he would need a sick certificate. The claimant says that next day, 8th November he stated he was fit to work with adjustments, as occupational health had reported on 31st of October. The tribunal does not find that she responded in this way because he had lodged a grievance of disability discrimination. It was because she wanted the claimant to work in the courthouse if he was fit for work. There was plenty of work to be done that did not require use of a laptop (which was the work that required adjustments), and as of 7th November he did not have oxygen to administer, requiring a private space, and moving his desk was straightforward. That she wanted him working at the courthouse, not at home, was clear enough on 21st of September 2023, a month before the grievance, and followed his behaviour between 14th and 21st of September.

129. The next detriment alleged is that he was refused a copy of the recording taken at the grievance investigation meeting on 21st November 2023. At the beginning of the meeting the claimant was told the meeting was to be recorded, and he objected. Dee Kavanagh then explained that it was standard practice to record it to assist the minute taker, but when the minutes had been agreed, the recording would be deleted. He then agreed. At the conclusion of the meeting this was reiterated. Later that day, his trade union representative emailed her saying: "we would like the recording to be entered into evidence", meaning, it should not be destroyed when the minutes were agreed. Miss Kavanagh refused. She said she had given the claimant her assurance about its use, and if he had wanted a taped recording, that should have been agreed before the meeting started, or raised again at the end. In the event, the claimant agreed the minutes, and the recording was destroyed.

130. The non legal members of the panel confirm that recording a meeting is unusual, but some employers do this to resolve any disputes about the accuracy of the minutes. The trade union representative has not attended to give evidence, and we do not know whether there was a background to any dispute about the use of recordings. Taking all we know about this, we concluded that Ms Kavanagh had not responded to Phil Wates as she did because the claimant had complained of disability discrimination. She did it because of the agreement reached when the claimant objected to a recording being made at all, and would have done this if the meeting had been about any grievance, whether discrimination was alleged or not.

131. Item 5.2.5 on the list of issues is a list of 10 statements made by Dee Kavanagh in the course of the grievance meeting. The way she expressed herself was undoubtedly forthright, sometimes blunt. The first matter complained all of is: “OH put in their report what you've asked them to put in this report. They’re not doctors”. But this is an observation often made about occupational health reports, because too often the adviser reporting is not provided with other medical information, and only hears the individual story. When she said “I'm very familiar with occupational health reports and it’s advice only. We do not have to follow it” that was not an unreasonable observation either. The occupational adviser evidently knew very little of the nature of the claimant’s job otherwise working from home could not have been recommended, and, as often, an adviser can suggest adjustments, and it is for the employer to consider whether those adjustments can reasonably be made. When she said about Ann Downer not following the attendance management policy, “now the sting in the tail of that one is, if it had been followed, you may not have had a job at this stage because you may have been sacked”, that was a reasonable observation about the alternative chain of events. It was plain speaking, not what the claimant wanted to hear, so no doubt he experienced it as detriment, but not reasonably so. Nor did she say it because he had alleged discrimination. It would have been apparent to any manager (including the claimant who himself line managed others) that this was a factual observation.

132. Off the complaint about her saying “because of his role and seniority, working from home doesn't work for the organisation”, and not being able to speak about other people on band C, this was again a factual observation about whether working from home was reasonable for a delivery manager in a busy courthouse. It is not said that the other band Cs were doing the same job. Similarly, when Ms Kavanagh was invited to consider that other employees had remained on full pay for a long time while adjustments were made for disability, and she responded “we're not going there with that case”, this is a statement that they were going to implement adjustments as soon as they could. That is not a detriment. That is what the claimant wanted.

133. Then there is complaint of Ms Kavanagh saying the claimant’s length of time off sick could have contributed to making no progress in certain adjustments aspects (probably a reference to the claimant not coming into work so that some of them could not be implemented) and “your passport, you only submitted it in October” (in fact, 3rd of November 2023, 18 days before this meeting), and the union representative said that a passport was not required to put adjustments in place, Ms Kavanagh insisting that they did, It remains the case that respondent had wanted an occupational health report to deal with the claimant’s principal requirement to work from home, and that report did not arrive until the 30th of October. Review of the subsequent dialogue shows the a circular argument about whether the claimant was fit for work with adjustments, as he maintained, or should be off sick if “still going through an episode”. Asked then what adjustments he wanted, he said “a DSE assessment would be good. Maybe a glare screen”, and she observed that he knew that could only be done when he was in the workplace. This is a discussion of the ongoing problem of whether the claimant was fit for work, or could work at home. Miss Kavanagh's approach was firm, but factual. Then there is complaint of her remarks about why respondents was not prepared to agree that he could work from home, that the claimant “lacked the knowledge and experience to be occupied, for any

reasonable period of time, working from home and will be unable to provide constructive support for Westminster operations or to the chief magistrate's office". The claimant says this remark is detrimental to him, when he had been working from home once a week since February 2023. That overlooks that he did not want to work just one day a week from home. Again, it was objective, and we say the same about a subsequent comment complained of that his absences, whether sick or working from home put unreasonable pressure on the rest of the senior management team, or their ability to take preferred annual leave dates. This again is a statement of a reason for the finding that he could not be allowed to work from home as often as he wished. The same goes for the further statement that he knew that he had to work from the courthouse when he took up the job. The claimant's wife did not question Ms Kavanagh about this. It is possible that she overstepped the mark in saying that his frequent absences prevented adequate training and left the court vulnerable, overstating the case, but there is no doubt that she was exploring why working home from home was unsuitable in factual terms, and she did not say this because he had alleged discrimination. If she was overstating the case, we concluded this was because she had reached a provisional view that the claimant was trying to have his cake and eat it - not work, but not be off sick with the pay consequences, What's the suggestion of some dishonesty in the mount he was actually working when at home. She continued in the same vein in the final remark complained of: "Mr Sandhu's request is not compatible with business needs, his assigned post or the grades he holds, and his request to work from home is unreasonable and lacks insight into his responsibilities". Overall, the claimant found her attitude provocative. He said she had "shut down" the points he wanted to make, and he felt his character was being attacked. Undoubtedly his character was being attacked, but it is a fair statement of the respondent's approach, forcefully expressed. The employment tribunal's finding is that her forthright expression of the respondent's case on working from home as an adjustment was not because the claimant had complained of disability discrimination, but was exasperation at his subjectivity, but also because she had reached a preliminary view that he was persistently working less than his contracted hours, and failing to report his timekeeping on flexi sheets, even when instructed to do so, the conduct which led her to recommend disciplinary action after she had investigated the detailed pattern of the claimants absences and his communication with must downer about them.

134. Although Ms Kavanagh expressed herself in strong terms, the reason she was giving for not allowing work from home was founded in fact. The observation that the claimant lacked insight into his role is a reasonable one. In his frequent requests to work from home, even when not suffering an episode but asking for a phased return, he was clearly not thinking about effect of his absence on his colleagues, or how most of his job could be done from home.

135. The last remark of Ms Kavanagh complained of is 5.2.8, that in that part of her report about the failure to pay his wages in September she indicated that the determining officer may feel that he was deserving of an apology. The claimant says that this was an insufficiently insincere response to his grievance. The claimant had wanted an explanation; it was being suggested he should get an apology. Mr Morris himself decided to initiate a further investigation as to just what had happened. That investigation suggested firstly that it was because of information imported to the computer system, secondly that it was not through human intervention. The tribunal does not find it easy to understand why a

proposal that he should get an apology is to his detriment. In any case, Ms Kavanagh may have been referring to the claimant not being given enough notice that his sick pay was to reduce, rather than not being paid at all, There was still nothing to suggest that Ms Downer could predict this, although the claimant did not in fact suspect already suspect it.

136. The very last matter alleged as detriment because of having made the complaint of discrimination is 5.2.9: "being referred by the respondent for disciplinary action on five counts". Here the respondent raises a time point: he knew this when he saw the grievance investigation report on the 12th of January. By 5th February Charlotte Newman had been assigned to investigate it. The claimant did not make this allegation until the draft agenda for the preliminary hearing, dated 8th April 2024. The allegation appears to have been made in time. If we are wrong about that, we consider that it is just and equitable to allow it to proceed because the claimant raised it at the next opportunity, just before the preliminary hearing. As for the substance of the allegation, Ms Kavanagh made her recommendation in the context of investigating the claimant's grievance, she did not do that because he had complained of discrimination. She did it because she had come across facts which carried a strong implication that he was failing to report his working time, working less than full hours, and failing to complete flexi time sheets even when asked to. At its highest, she should simply have recommended that all five matters be investigated as disciplinary issues, rather recommending that three of the five should proceed direct to a disciplinary hearing. It is hard to see how this was to the claimant's detriment, as in the event the disciplinary process was at his request paused until his return to work and Ms Newman decided to investigate all five, not just two. If it was to his detriment, it was not because he had alleged discrimination but because of the facts that she came across when investigating his grievance, in particular the WhatsApp exchanges between Ann Downer and the claimant in 2022 and 2023, cross referenced to the texts and emails from the same period.

137. We conclude that the claimant was not subjected to detriment because he had complained of disability discrimination and the victimisation claim fails.

Approved by:
EMPLOYMENT JUDGE GOODMAN

Date: 5 February 2025

JUDGMENT AND REASONS SENT TO THE PARTIES ON

12 February 2025
.....

.....
FOR THE TRIBUNAL OFFICE

APPENDIX
AGREED LIST OF ISSUES

1. **TIME LIMITS**
1.1 The Claimant lodged his claim against the Respondent on 28 November 2023, (having obtained an ACAS Early Conciliation Certificate R280340/23/92) on 22 November 2023.

1.2 Did the Claimant bring the claim within three months (taking into account any extension during the ACAS early conciliation period) of:
1.2.1 The alleged unlawful deduction of any wages?
1.2.2 The alleged discriminatory act or omission?

1.3 If the Claimant did not bring the claim within three months of the alleged acts or omissions (taking into account any extension during the ACAS early conciliation period):
1.3.1 Did any alleged discriminatory acts or omissions form part of a continuing act with allegations that are in time?
1.3.2 In respect of any claim not brought in time to which the Employment Rights Act 1996 applies is the Employment Tribunal satisfied that it was not reasonably practicable for the complaint to be presented before the end of the relevant period of three months?
The Claimant relies on:
(a) ''I was dealing with the stress of coming to terms with my recent diagnosis without any support from my employer. I was mentally and physically exhausted of begging my employer for help'.
(b) If so, what further period does the tribunal consider reasonable?
1.3.3 In respect of any claim not brought in time to which the Equality Act 2010 applies, is the Employment Tribunal satisfied that it would be just and equitable to grant permission for the claim to proceed? The Claimant relies on:
(a) Trying to address the matters in good faith internally and informally before exhausting all options and seeking external intervention.
(b) 'I was dealing with the stress of coming to terms with my recent diagnosis without any support from my employer. I was mentally and physically exhausted of begging my employer for help'.
(c) 'It was only when I had exhausted all internal channels and I realised no one was going to help me, did I seek to pursue a formal external route to resolution'.

2. DISABILITY
2.1 Does the Claimant have a disability within the meaning of Section 6 of the Equality Act 2010?

2.1.1 The Respondent accepts that on 30 June 2023, the Claimant informed the Responded that he suffered with Chronic Cluster headaches, this condition having been diagnosed the same month.
2.2 If so, what was the effect of that disability on normal day-to-day activities?
2.3 If the Claimant is a disabled person, did the Respondent know the Claimant was disabled at the relevant time(s)? If so, from what date did the Respondent have such knowledge?
2.3.1 The Respondent accepts that from 30 June 2023, the Respondent was aware that the Claimant suffered with Chronic Cluster headaches.
2.4 If not, could the Respondent be reasonably expected to have known of the Claimant's disability at the relevant time(s)? If so, from what date did the Respondent have such knowledge?

3. DISCRIMINATION ARISING IN CONSEQUENCE OF DISABILITY (S. 15 EA 2010)
3.1 Did the Respondent treat the Claimant unfavourably because of something arising in consequence of their disability?

3.2 The Claimant alleges that the 'something arising' was absence from work.

3.3 The Claimant alleges that unfavourable treatment was:

3.3.1 Being regularly made to feel guilty and under pressure to attend by the Respondent when suffering with his disability. The Claimant relies on the following occasions:
(a) On 17th September 2023 the Claimant emailed the Respondent following a period of sickness. The Respondent replied to say "Really busy day and ideally you would have been in tomorrow, but I have meetings in the morning so will contact you in the afternoon to complete your RTW".
(b) On 21st September 2023, following a period of disability related absence, during a return-to-work conversation, the Claimant was told his childcare arrangements (one work from home day per week, in place since January 2023) would cease with immediate effect.
3.3.2 Not being afforded the same opportunity for regular career development

conversations as colleagues. The Claimant relies on having only one 'talent conversation' with his line manager over a two-year period.
3.3.3 A failure by the Respondent to act on recommendations of Occupation Health (reports dated 9 August 2022, April 2023 and October 2023) by putting reasonable adjustments into place in a timely manner.
3.3.4 A failure by the Respondent to act on the Claimant's requests for adjustments, set out in emails from the Claimant dated 10th July 2023, 15th August 2023, 17th September 2023, 20th October 2023.
3.3.5 A failure to grant disability leave whilst reasonable adjustments were put in place.
3.3.6 Delay in concluding the grievance procedure.
3.3.7 Provision of statutory sick pay only from January 2024, and no pay from 14 April 2024.
3.3.8 The Claimant's manager or another point of contact failing to make contact for welfare purposes in accordance with the Respondent's own attendance management processes.
3.4 If so, did the Respondent treat the Claimant unfavourably because of something arising in consequence of their disability?
3.5 Can the Respondent show that that treatment was a proportionate means of achieving a legitimate aim within the meaning of section 15(1)(b) of the Equality Act 2010?

4. FAILURE TO MAKE REASONABLE ADJUSTMENTS

4.1 Did the Respondent apply a provision, criterion or practice (PCP) to the Claimant, which it would also apply to employees who do not share the Claimant's disability? The PCPs relied upon by the Claimant are:
4.1.1 A requirement to work in person in the office during fixed hours.
4.1.2 Working in an open plan office.
4.1.3 Working in an office with bright overhead lighting.
4.1.4 A practice of failing to follow the attendance management policy.
4.2 If so, did that PCP put the Claimant at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled?
4.3 The substantial disadvantage relied upon by the Claimant is:
4.3.1 In respect of the PCP at 4.1.1:
(a) Having to work in the office while suffering from flare ups of his condition;
alternatively
(b) Being made to feel guilty, and therefore stressed, when working from home.
4.3.2 In respect of the PCP at 4.1.2:
(a) Having to take his medication (oxygen) in front of others.
4.3.3 In respect of the PCP at 4.1.3:
(a) The lighting exacerbating his condition
4.3.4 In respect of the PCP at 4.1.4:
(a) No meeting being convened after the Claimant met attendance trigger points, with the result that he did not have the support required and suffered financial loss.
4.4 Did the Respondent take such steps as it was reasonable to have to take to avoid the disadvantage? The Claimant alleges that the following adjustments should have been made:
4.4.1 In respect of the PCP at 4.1.1:
(a) A contingency plan for allowing him to work from home and flexible hours during flare ups of his condition.
4.4.2 In respect of the PCP at 4.1.2:
(a) A private place in which to take his medication privately.
4.4.3 In respect of the PCP at 4.1.3:
(a) Adjustment to the lighting.
4.4.4 In respect of the PCP at 4.1.4:
(a) Holding attendance meetings.
4.5 The Claimant further alleges a failure to provide the following auxiliary aid:
4.5.1 Screen protective software.

5. VICTIMISATION (S. 27 EA 2010)
5.1 Did the Claimant do a Protected Act?

5.1.1 The Claimant relies on the act of raising concerns about disability discrimination in his grievance on 27th October 2023.
5.2 Did the Respondent subject the Claimant to a detriment? The Claimant relies on:
5.2.1 Between 30th October and 3rd November 2023, Alison Aedy made the comments such as "as you drive to work, I would hope that you are not experiencing any episodes and if you were then you should be at home".
5.2.2 An email from Alison Aedy to the Claimant on 30th October 2023 stating "we can

consider moving you onto disability leave whilst the Workplace adjustments are considered."
5.2.3 An email to the Claimant from his line manager on 7th November 2023 stating that disability leave was not an option for her to consider and that the Claimant would need to provide a sick certificate to cover days absent from office, despite that on 8th November 2023 the Claimant had stated that he was fit to work with adjustments, as had OH in the report dated 31st October 2023.
5.2.4 Being refused a copy of the recording taken at the Grievance Investigation meeting on 21st November 2023.
5.2.5 On 21st November 2023 in a Grievance Investigation meeting conducted by Dee Kavanagh as Investigating Officer, the following statements being made by Ms Kavanagh:
(a) "OH have put in their report what you've asked them to put in the report. They're not doctors.";
(b) "I'm very familiar with occupational health reports and its advice only. We do not have to follow it."
(c) Regarding the Claimant's line manager not following the attendance management policy, ""Now, the sting in the tail on that one is, if it had been followed, you may not have a job, at this stage, because you may […] have been sacked".
(d) "Because of his role and seniority, working from home doesn't work for the organisation". Upon the Claimant's union representative stating that other Band Cs work from home one or two days a week, stating, "I can't talk about other people."
(e) "I am well aware of others with disabilities who have been afforded the rights to disability leave until reasonable adjustments can be made." Upon the Claimant's union representative referring to the Respondent allowing someone to stay on full pay for four years whilst adjustments were made, Ms Kavanagh stating "we're not going there with that case."
(f) "you have had an extreme amount of sickness, which has contributed to the fact that we have made no progress in certain aspects that you are now complaining about. I mean your passport, you only submitted it in October". Upon the Claimant's union representative that you don't have to have a WAP (workplace adjustment passport) to have adjustments put in place, Ms Kavanagh inaccurately stating that the Respondent relies on this WAP.
(g) "Mr. Sandhu lacks the knowledge and experience to be occupied, for any reasonable period of time, working from home and would be unable to provide constructive support for Westminster operations or to the Chief Magistrate's office.", in circumstances where the Claimant alleges he had been working from home once a week for childcare reasons for a year with no issues, performance related or otherwise.
(h) "Mr. Sandhu's absences, or when working from home, impact the rest of the senior management. team in terms of unreasonable pressure, stress, and their ability to take their preferred annual leave dates".
(i) "Mr. Sandhu should have been aware of the above-stated requirements and the importance of the grade he was to hold prior to taking up the appointment. His frequent absences, in my view, have prevented adequate training from being provided to him and left the court vulnerable. The pressure placed on the remaining management team is untenable."
(j) "I would strongly propose that Mr. Sandhu's request is not compatible with business needs, his assigned post or the grade he holds, and that his request to work from home is unreasonable and lacks insight into his responsibilities."
5.2.6 Raising in the 21st November 2023 in a Grievance Investigation meeting and the outcome report thereafter questions about the Claimant's capability and performance. The above listed allegations regarding the 21 November 2023 meeting were detailed for the first time in the Claimant's draft amended list of issues on 12 April 2024. The Tribunal has granted permission for the allegations to be added, which permission is without prejudice to the Respondent's ability to assert that the allegations were brought out of time.
5.2.7 An email from the Claimant's line manager on 23rd November 2023 stating "I am not considering disability leave until such time the grievance brought against me has been finalised".
This allegation was made for the first time in the Claimant's draft amended list of issues on 12 April 2024. The Tribunal has granted permission for the allegation to be added, which permission is without prejudice to the Respondent's ability to assert that the allegation was brought out of time.
5.2.8 In the grievance investigating officer's report dated 28th December 2023, the investigating officer recommending that "the determining officer may feel Mr Sandhu is deserving of an apology". The Claimant asserts that this was an insufficient/insincere response to his grievance.

5.2.9 The fact of the Claimant being referred by the Respondent for disciplinary action on five counts.
This allegation was made for the first time in the Claimant's draft agenda dated 8 April 2024. The Tribunal has granted permission for the allegation to be added, which permission is without prejudice to the Respondent's ability to assert that the allegation was brought out of time.
5.3 Did the Respondent do the above acts, or any of them?
5.4 If so, has the Claimant proven facts from which the Tribunal could conclude that it was because the Claimant did a protected act?
5.5 If so, has the Respondent shown that there was no contravention of section 27?

6. UNLAWFUL DEDUCTION OF WAGES
6.1 Did the Respondent make a deduction from the Claimant's wages?
6.2 If so, when was that deduction made and what amount was deducted?
6.2.1 The Claimant alleges that on 28th September 2023, £1183.87 was deducted from his pay.
6.3 If so:
6.3.1 was that deduction required or authorised to be made by virtue of a statutory provision or a relevant provision of the Claimant's contract; or
6.3.2 did the Claimant previously signify in writing his agreement or consent to the making of the deduction?

7. REMEDY
7.1 If the Claimant is successful in his claim, to what remedy is he entitled?
7.2 Is an award for injury to feelings appropriate? If so, how much should be awarded?
7.3 What compensation would be just and equitable?
7.4 Has the Claimant mitigated his loss and should there be a deduction of sums earned for such mitigation, or to reflect a failure by the Claimant to take reasonable steps in mitigation?
7.5 Should there be an increase or reduction in any award on the basis of any failure to comply with the ACAS Code of Practice on Discipline and Grievance Procedures? The Claimant relies on the following alleged failures:
7.5.1 The Claimant raised his grievance on 27th October 2023. The grievance investigation meeting took place on 21st November 2023.
7.5.2 'I had heard nothing between the date of my investigation report on 21st November 2023 and 9th of January 2024 when I asked my trade union representative to check in on the status of my grievance'.
7.5.3 Grievance hearing meeting held on 19th January 2024; outcome delivered on the 26th January 2024.
7.5.4 The Claimant submitted his appeal to the grievance outcome on 9th February 2024 and attended an appeal hearing on 22nd March 2024. The grievance is on-going, and he is yet to receive an outcome from the delivery director who heard the appeal.
7.5.5 The Respondent has prolonged the Claimant's suffering by unreasonably delaying the grievance process and not providing timely updates.
7.6 Should interest be awarded? How much?