EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8000069/2024

Held in Glasgow on 10, 11 & 12 March 2025

Employment Judge L Wiseman
Members L Brown & G McKay

Ms S Rashid	**Claimant** **In Person**
Student Loans Company Ltd	**Respondent** **Represented by:** **Ms N Sandhu - Solicitor**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Tribunal was:

(i) the complaints of discrimination (failure to make reasonable adjustments, section 20 Equality Act; harassment, section 26 Equality Act; direct discrimination, section 13 Equality Act) and flexible working request (section 80G Employment Rights Act) were presented late and a Tribunal has no jurisdiction to determine those claims;

(ii) the complaint of unfair dismissal is dismissed and

(iii) the respondent's application for expenses in terms of Rule 74(2) Employment Tribunal Rules of Procedure 2024, is refused.

REASONS

1. The claimant presented a claim to the Employment Tribunal on the 22 January 2024 alleging she had been unfairly dismissed and discriminated against because of the protected characteristics of disability and race/religion.

2. The respondent entered a Response in which it admitted dismissing the claimant for reasons of capability (following long term sickness absence) but denying the dismissal was unfair. The respondent ultimately accepted the claimant was a disabled person in terms of the Equality Act, but denied the allegations of discrimination.

3. A case management preliminary hearing took place on 2 October 2024 following which a very helpful Note was issued to the parties which particularised the claims being made by the claimant. This Note was produced at page 73 and formed the list of issues (set out below) to be determined by the Tribunal.

4. The respondent produced the folder of documents for the hearing. The claimant sought leave to produce further documents at the start of the hearing: the respondent objected to this. The Tribunal allowed the documents to be produced but in fact the claimant did not produce them until the following day because she had not brought copies of the documents for the tribunal. The claimant also produced a document on the last day of the hearing just prior to submissions. The respondent objected to this document, but it was accepted by the tribunal (and is referred to below).

5. The Tribunal heard evidence from Ms Karen Sutherland, the claimant's line manager who took the decision to dismiss; Ms Amanda Cairns, Senior People Adviser; Ms Jacqueline Brown, Operations Leader who heard the claimant's appeal; the claimant and the claimant's witness Ms Tabassum Niamat. Each witness had prepared a witness statement.

6. The Tribunal, on the basis of the evidence before it, made the following material findings of fact (but before turning to that, we noted the procedural background of this case).

Background

7. There has been a significant procedural background in this case.

8. The claimant presented her claim on 22 January 2024. The claimant was notified that a case management preliminary hearing had been arranged for the 21 March 2024.

9. The respondent entered a Response and completed and returned an Agenda in preparation for the hearing on 21 March 2024.

10. The claimant, on 15 March, sought a postponement of the hearing on 21 March because of her mental health and it being Ramadan. The respondent objected to the application, but it was granted and the hearing was postponed and re-arranged for 23 April 2024.

11. The claimant, on the afternoon of 22 April, sought postponement of the hearing listed for 23 April because she was seeking legal assistance. The respondent objected to this application and parties were notified, on the morning of 23 April (at or about 9.20am) that the application had been refused and the parties were to attend the hearing.

12. The claimant failed to attend the hearing on 23 April. The hearing proceeded for the purposes of case management and the claimant was ordered to provide an explanation for her failure to attend and to complete an Agenda.

13. The claimant did so and subsequently produced a Fit Note from her GP on 10 May 2024.

14. A rearranged preliminary hearing took place on 2 October. Both parties were in attendance for the hearing (Agendas had been completed; medical records had been provided and the respondent had, in the intervening period conceded the claimant was a disabled person for the purposes of the Equality Act). The Employment Judge issued directions for the listing of the final hearing in February 2025 and the production of documents for the hearing and preparation of witness statements.

15. The claimant, on 13 January 2025 (the day witness statements were due to be exchanged) made an application for an extension of time for her witness statement to be prepared, and made an application for a postponement of the final hearing due to health and personal reasons. The respondent agreed to a 7 day extension of time for exchange of witness statements, but objected to the postponement application.

16. The Employment Judge granted a 7 day extension of time for the witness statements to be exchanged, but refused the application for postponement of the hearing because the letter from the claimant's GP did not say the claimant was unfit to attend the hearing.

17. The respondent sent the witness statements of its witnesses to the claimant on 20 January 2025.

18. The claimant, on the 20 January, made an application for reconsideration of the decision to grant a 7 day extension for her witness statement and to refuse the application for a postponement of the hearing. The respondent objected again to the application for a postponement and made an application for an Unless Order in respect of the claimant's witness statement (which was refused at this time).

19. The Employment Judge refused the claimant's application for reconsideration of the decision to refuse the application for a postponement of the final hearing because the letter from the GP still did not state the claimant was unfit to attend the hearing. The letter to the claimant clearly explained that if the claimant obtained a letter from the GP in terms that she was unfit to attend the hearing, the application for postponement would be reconsidered.

20. The claimant, on 31 January, renewed the application for postponement of the hearing and advised that she could not complete her witness statement without the required information from the documents. The respondent objected to this application.

21. The Employment Judge, noting the lateness of the application, the respondent's objection and the fact there was still the issue of the claimant's

witness statement, ordered all parties to attend the start of the final hearing on the Monday morning where all matters and applications would be dealt with.

22. The claimant emailed the Tribunal (not copied to the respondent) at 18.23 to advise that she was not mentally prepared to attend.

23. The full Tribunal, the respondent's representative and the respondent's witnesses attended on Monday 3 February. The claimant was not in attendance. The Employment Judge issued an Order discharging the hearing and relisting it for 10 – 13 March 2025. These dates were suitable to the respondent and the claimant's GP had noted in the letter that the claimant had said she wished the hearing postponed until after February.

24. The claimant, on 17 February, wrote to the Tribunal to say that she was having difficulty completing her witness statement and she made an application for a postponement of the re-arranged hearing until April/May because "*the month of March is Ramadan*" and she and her witness would not be available.

25. The respondent objected to the application because this was the claimant's fourth application for postponement, it would cause further delay and the claimant had still not provided her witness statement.

26. The Employment Judge, based on the information provided in the application and objection, refused the claimant's application for postponement of the hearing.

27. The Employment Judge granted the respondent's application for an Unless Order in respect of the claimant's witness statement. The Order, dated 20 February, ordered the claimant to produce her witness statement by 5pm on 28 February (Friday).

28. The claimant emailed the Tribunal at 5.06pm on 28 February providing a draft witness statement and seeking an extension of time until 3 March for her statement.

29. The claimant emailed the Tribunal at 09.55 on 3 March with her witness statement.

30. The Employment Judge, on 4 March, acknowledged the correspondence from the claimant and confirmed the hearing would proceed to the final hearing due to start on 10 March.

31. The respondent, by email of 4 March, made an application for the case to be dismissed because the claimant had not complied with the Unless Order. The claimant was asked for her comments, but provided none.

32. The start of the hearing on 10 March (and 11 March) was delayed until 10.20 for the claimant's attendance.

33. The Employment Judge, at the commencement of the hearing, noted the respondent's application in respect of the Unless Order and acknowledged the effect of the Unless Order in circumstances where the claimant had not complied with its terms. However, the Employment Judge noted that in terms of rule 39(2) of the Employment Tribunal Rules of Procedure 2024, the claimant could seek to have the dismissal of the claim set aside. The Employment Judge considered that any such application would be successful given the time of the claimant's email on 28 February and the fact we now have the witness statement.

34. The Employment Judge considered that in circumstances where both parties were in attendance and ready to proceed with the hearing, the Unless Order should be set aside and we should proceed with the final hearing. The respondent agreed.

35. The claimant did not appear on the final day of the hearing. The Employment Judge asked the clerk to make telephone contact with the claimant. The clerk did so and was advised by the claimant that she had sent an email that morning (at 10.12am) to say she was running late. The claimant attended at 11am.

36. The claimant, who advised the Tribunal she was fasting, was accommodated with breaks mid-morning and as requested. The Tribunal also adjourned the

hearing early on the first day (2.30pm) after the evidence of the respondent's witnesses. The claimant gave her evidence on the second day and the Tribunal offered the claimant the opportunity to adjourn at 2.30pm again, but the claimant wished to continue to conclude the evidence of her witness. The Tribunal did so and rose at 3.30pm, with it being agreed that submissions would be dealt with on the third day.

List of Issues

Disability Discrimination

37. The respondent accepted the claimant was a disabled person as defined, at all relevant times, as a result of the conditions of long Covid, arthritis, type 2 diabetes, stress, anxiety and depression.

(1) Claim of failure to make reasonable adjustments

(a) The PCP was defined as being "on the claimant's return to work from sick absence on or around 13 January 2023, did the respondent require the claimant to work all or part of her 20 working hours in the office?";

(b) If this amounted to a PCP for the purposes of section 20 Equality Act, did the PCP put the claimant at the substantial disadvantage that she could not cope with her work, resulting in her being off sick again with effect from 26 January 2023;

(c) Did the respondent know, or could they reasonably have been expected to know, that the claimant had the disability and that she was likely to be placed at the above disadvantage by the PCP;

(d) Would it have been reasonable for the respondent to make the following adjustments to avoid the disadvantage: (i) allowing the claimant to work her 20 working hours from home or (ii) allowing the claimant hybrid working with fewer days in the office and more at home.

(e) Was this claim out of time and if so, would it be just and equitable to extend time.

(2) Claim of disability related harassment

(a) The alleged acts of harassment were (i) Ms Sutherland instructed the claimant to contact her before each sick line expired, to confirm whether her absence was to continue or not. On or about 6 February 2023 the claimant called Ms Sutherland and said that she would continue to be off sick and would hand in a further sick line shortly. Ms Sutherland told the claimant she had called in too early. The claimant replied that Ms Sutherland had asked her to call before the sick line ran out. Ms Sutherland questioned the claimant about how long she would be off, what symptoms she had, what the doctors were doing to help her, whether the doctor's appointments had been by telephone or face-to-face, what medications the claimant had been prescribed and what physical things she could and could not do and (ii) on or about 8 February 2023 the claimant was called under citation as a witness to give evidence at the public inquiry into the death in police custody of Sheku Bayoh. The claimant was shown on television attending the inquiry. Ms Sutherland saw the claimant had attended the inquiry while off sick and she sent the claimant a message or messages. On or about 10 February 2023, Ms Sutherland telephoned the claimant and questioned her about her health. She asked about the citation to give evidence and asked the claimant "is that the reason why you phoned me on Monday to say you would be off on Wednesday?" The claimant understood this to imply that she had been lying about her health. The claimant told Ms Sutherland that she had had to attend the inquiry and could not get out of it. Ms Sutherland asked what reasonable adjustments had been made for her by the court and why she had attended

the court if she was unwell. She told the claimant that if she was well enough to be at court, she was well enough to be at work.

(b) Did Ms Sutherland's alleged conduct during these telephone calls with the claimant amount to unwanted conduct related to the claimant's disability and

(c) Did the alleged conduct of Ms Sutherland have the purpose or effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant.

(d) Was the claim of harassment out of time and if so, would it be just and equitable to extend time.

(3) Claim of direct discrimination because of religion

(a) Did Ms Sutherland treat the claimant less favourably in the following ways because of the claimant's Muslim religion:

(i) In or about December 2022 the claimant had a conversation with Ms Sutherland in which she asked to book two weeks' holiday during Ramadan in April 2023 in order to go on a pilgrimage. In the same conversation the claimant asked if she could work from home or take unpaid leave during the remainder of Ramadan in April 2023. Ms Sutherland said that holidays had not been approved for anyone at that time and that the claimant would not be able to get that time off. She said the claimant would need to provide proof as in flight details, how long she was going to be away, the dates and booking confirmation. The claimant's father was arranging the trip so the claimant said she would get the information. The claimant then sent Ms Sutherland an email. Ms Sutherland took the claimant into her office: the claimant told Ms Sutherland she thought it was unfair

because booking details had not been requested from other employees requesting holidays at that time, so why had she been asked for them? Ms Sutherland replied that that was how it worked according to the policy.

(ii) In relation to the claimant's request to work from home or take unpaid leave for the remainder of Ramadan, Ms Sutherland told her that these options were not there.

(iii) On other occasions, at around that time, Ms Sutherland questioned the claimant about her religion: she asked why she needed time off to do things for her religion; why she could not work in the office or fast in the office? The claimant's previous managers had allowed her to take unpaid leave or work from home for the full month of Ramadan without questioning her.

(iv) When the claimant or members of her close family had Covid in or about January 2023, the claimant had been required to come into the office, whereas other members of the team (Catriona, Stuart, John and Catherine) were allowed to work from home when they had covid.

(b) The comparator in relation to points (i), (ii) and (iii) above is a hypothetical comparator who does not practise the Muslim religion, but whose material circumstances are otherwise the same as the claimant's.

(c) Is the claim timebarred and if so, would it be just and equitable to extend time.

(4) Flexible Working Request (section 80G Employment Rights Act 1996).

(a) Did the claimant make a flexible working application under section 80G ERA in or about August 2022;

(b) If so, did the respondent comply with its obligations under that section;

(c) Was that application disposed of by agreement or withdrawn;

(d) If not, was the claimant's Tribunal claim presented within three months of the relevant date under section 80H(6) EAR? If not, was it not reasonably practicable for the claimant to present the claim in time? If so, was it presented within such further period as the Tribunal considers reasonable.

(5) Unfair Dismissal

(a) Was the claimant's dismissal with notice for reasons of capability (ill health) on the 19 December 2023 unfair.

(6) Remedy

(a) If the claimant's claims or any of them succeed, what remedy is she entitled to?

Findings of fact

38. The respondent is a non-profit making, government owned organisation set up to provide loans and grants to students in universities and colleges throughout the United Kingdom.

39. The claimant commenced employment with the respondent on 23 May 2011. The claimant was, at the time of her dismissal, employed as a Student Finance Administrator, based in the pre-assessment team in Hillington.

40. The claimant worked 20 hours per week over 5 days (4 hours each day). Her core hours were 8am to 12 noon.

41. The claimant had, prior to moving to the team in Hillington, been in the Indexing team, which was part of a team based in Darlington. In May 2022, the decision was taken to incorporate the task of Indexing into the work done by the team based in Darlington. The claimant and others were amalgamated into the team in Hillington.

42. The claimant, upon joining the team in Hillington, reported to Ms Karen Sutherland, Team Leader and the claimant's line manager.

43. The claimant, prior to joining the team in Hillington, had a hybrid working arrangement in place. This had been due to the covid pandemic and these arrangements changed as the pandemic progressed.

44. The hybrid working arrangement which had been in place terminated upon transfer to Ms Sutherland's team due to the nature of the work carried out by that team.

45. The claimant's role in Hillington involved dealing with incoming mail which required to be processed. This consisted of x-raying incoming mail to confirm receipt, opening and organising the mail, arranging the mail into different categories, registering the mail on the system and passing it over to the scanning team. This work had to be completed within specific timescales: for example, incoming mail had to be processed on the same day it was received and some of the mail was expected to be processed onto the system by 11am.

46. The months of August to December each year are peak processing time for Education Maintenance Allowance (EMA) mail. There is a significant increase in the amount of mail received during these months and EMA applications must be processed within 21 days.

47. The processing work carried out by Ms Sutherland's team cannot be done from home. No-one in Ms Sutherland's team is permitted to work from home on a full time basis due to the nature of the work. The team, during the peak period of August to December, must attend for work in the office; however, during the non-peak period, the team may work from home one/two days a week.

48. The respondent introduced a Hybrid Working Policy (page 173) in 2021. The policy provided that employees are expected to spend a minimum of 2 full days per week in the office, but this is department specific, and in Ms Sutherland's department, due to the nature of the work, employees have to be in the office more than this.

49. Ms Sutherland requires to have enough staff in the office to ensure work is completed within the terms of the Service Level Agreement. Ms Sutherland may allocate working from home days to those in the team taking into account annual leave, sickness and tasks. This is done on a week to week basis: however, during peak time there is no working from home; but during non-peak time, the team work from home up to 2 days per week.

50. The claimant is a disabled person in terms of section 6 of the Equality Act. The claimant has the impairments of Long-Covid; Arthritis; Type 2 diabetes; stress, anxiety and depression. The claimant is Muslim religion.

51. The claimant was absent on sick leave at the time of moving to Ms Sutherland's team in May 2022. The claimant returned from sickness absence in August 2022 and a return to work meeting was held with Ms Sutherland, who detailed the structure of the team and the work. Ms Sutherland and the claimant agreed a phased return to work comprising the claimant working 50% of her hours in the first week; 75% of hours in the second week and then using annual leave in the third week to reduce her hours as required. The claimant sought, and was granted, an extension to the phased return until 7 September 2022.

52. The claimant also asked if she could work from home for the duration of the phased return, due to her childcare commitments. This request was granted and so the claimant worked from home until 16 September 2022.

53. The claimant, whilst working at home, had to be allocated alternative tasks to carry out. There are limited tasks (for example, Returns) which Ms Sutherland's team can do at home due to the nature of the work. The indexing work which the claimant had done in her previous role had changed, and the claimant required training to be able to carry out that work (if it was available).

54. The claimant did not, during the month of August 2022, make a flexible working request. There was discussion between the claimant and Ms Sutherland regarding working from home, flexibility and adjustments (as detailed above) but the claimant did not make a flexible working request until December 2022 (below).

55. The claimant was due to return to working full time in the office after September 2022 (because it was peak time). The claimant was given notice that she would be required to return to the office, with a gradual increase in the days worked in the office. The claimant used her annual leave to reduce the number of days she had to be in the office. It was agreed the claimant would revert to working from home 1 day per week in January 2023.

56. In the period October to November Ms Sutherland had discussions with the claimant regarding her lateness (the claimant was late most mornings because of childcare), and agreed a temporary variation to the claimant's start and finish times. The claimant's request to work flexi-time was refused because the claimant's understanding of what flexitime meant was incorrect (the claimant wanted to attend at any time that suited her, and not within the core hours). Ms Sutherland referred the claimant to the Flexible Working Policy if she wished to permanently change her core hours.

57. The claimant submitted a formal flexible working request on 21 December 2022 to adjust her core hours to accommodate childcare. The claimant wanted to "slide" her core hours from 8am – 12pm to 8.30am to 12.30pm. The respondent's systems were down that day and so Ms Sutherland confirmed verbally to the claimant that her flexible working request had been approved. This was subsequently noted on the system.

58. All adjustments made by Ms Sutherland were to accommodate and assist the claimant with childcare. The claimant did not seek adjustments because of disability.

Covid

59. Ms Sutherland's team were classed as an essential team during the Covid pandemic and accordingly attended for work in the office throughout. The respondent's Supporting Attendance - Covid 19 policy stated that employees were to notify their manager in the usual way if they were sick and unable to work. The policy went on to say that an employee in self-isolation, who was fit for work, should work from home where this was possible. Where working from home was not possible, reasonable alternative duties should be explored

in the first instance, but if alternative duties could not be undertaken, the absence would be recorded as per the policy. If an employee was unfit for work due to covid, the absence would be recorded as per the policy. The policy provided for different types of absence being recorded as special paid leave of differing categories depending on whether the employee had covid but was fit to work at home or unfit for work or self-isolating whilst awaiting a test result. Ms Sutherland's team adopted this policy even during peak periods.

60. An employee in Ms Sutherland's team (Catrina) contracted Covid in November 2022 and worked from home in line with the policy. Another employee (Stuart) did not contract Covid and never worked from home for any reason. An employee (John) did not contract Covid and never worked at home for any reason. There is no employee called Catherine in Ms Sutherland's team, but there is a Christine, and she did not contract covid. One member of the team, Joe, did contract Covid in November 2022: he was unfit for work and off on sickness absence.

61. The claimant requested and was granted holidays on 22, 28 and 29 December and 4 January 2023. The claimant phoned Ms Sutherland during this time to advise that she and her three children had all caught covid. The claimant was due to return from annual leave on 9 January, but phoned in sick and was absent for 5 days. Ms Sutherland permitted the claimant to work from home on 16, 17 and 18 January 2023. This was in excess of the 1 day working from home granted to other employees.

62. The claimant returned to work on 19 January because she was no longer testing positive for covid, and felt sufficiently fit to return to work. The claimant was absent again on 26 January 2023 because she had contracted covid again.

Holidays

63. The respondent's Holiday and Time Off policy was produced at page 153. Section 5.5 of the policy dealt specifically with Religious or Cultural Observances and stated that *"Employees may request time off or a temporary*

change to their working hours for a religious or cultural occasion. Where this is applicable, and where possible, employees must supply their line manager with a calendar of all such occasions annually in advance. On each occasion, the employee must give as much notice as possible and inform their manager of their intended leave…" The policy went on to state that all managers should be sympathetic to requests and should accommodate them wherever it is reasonably practicable to do so.

64. The claimant, on 17 January 2023, submitted a request for time off for a holy pilgrimage, Umrah, from 27 – 30 March 2023. Ms Sutherland noted that the level of holidays which could be accommodated for her team had already been allocated, and so she asked the claimant (and other employees who had requested holidays in a period when holiday levels were at over allocation) for further details in order for her request to be passed to the Operations Leader and considered as an exception.

65. The claimant responded to Ms Sutherland's request for further information but stated the reason for the leave was Ramadan. The claimant also confirmed she did not have details of the travel plans because her father was making the arrangements. Ms Sutherland contacted Ms Morris, Operations Leader, but the matter could not be considered until the claimant provided the details requested.

66. The claimant did not ever provide the information requested by Ms Sutherland. The claimant went off sick with long-covid on 25 January 2023 and did not return to work.

The court case in February 2023

67. The claimant had made Ms Sutherland aware, when joining her team in 2022, that she may be called as a witness in the Sheku Bayoh inquiry.

68. The claimant was absent on sick leave and the respondent's procedure was that employees were required to contact their line manager prior to a fit note expiring in order to notify the manager whether they would be returning to work or obtaining another fit note.

69. The claimant phoned Ms Sutherland on 6 February 2023 and left a voicemail advising that she had been given another fit note for one week, and that she would not be available for the welfare meeting which had been planned for 8 February.

70. The claimant phoned Ms Sutherland again on 8 February and there was a discussion regarding the current fit note and the fact another fit note would be obtained by the claimant.

71. The claimant attended the Sheku Bayoh inquiry on 8 February. Ms Niamat drove the claimant to the inquiry. The claimant had not notified the respondent of the date of the inquiry.

72. Ms Sutherland was advised by her line manager, on 9 February, that she had seen the claimant on television at the inquiry. Ms Sutherland sought advice from Ms Amanda Cairns, Senior People Adviser. Ms Sutherland also spoke to the claimant and re-scheduled the welfare meeting for 10 February.

73. Ms Sutherland and Ms Cairns attended the Teams call welfare meeting with the claimant on 10 February. The notes of the meeting were produced at page 274. The purpose of the meeting was to find out how the claimant was, particularly in light of her attendance at the inquiry which had been very stressful for the claimant, and to provide support. The meeting was not to challenge the claimant about her attendance at the inquiry.

74. The claimant asked for a letter from a solicitor to be sent to the respondent explaining that she had been cited to attend the inquiry. The respondent responded to this and also wrote to the claimant to confirm their concern had been for her welfare and that they fully understood she had been required to attend court. The genuineness of the claimant's absence was not being questioned.

Occupational Health

75. The claimant's absence continued and welfare meetings took place in March and April 2023.

76. Ms Sutherland made a referral to occupational health in April 2023. There was a delay in the referral being actioned because Optima Health's attempts to contact the claimant were unsuccessful. A face to face appointment was ultimately arranged for the 12 July and the respondent received the occupational health report (page 376) on 9 August.

77. The report noted the claimant's health conditions of long-covid, arthritis, type 2 diabetes and sleep apnoea were likely to be a disability. The outcome of the assessment was that the claimant was *"not physically able to do her job role at this time due to her ongoing health conditions".* It was also stated that the claimant would benefit from adjustments being made to support her to manage her health, but that it would be for management to determine if the proposed adjustments were operationally viable in the long term. The adjustments included redeployment to a less physical role, with the option to work from home whilst undergoing medical investigations; reducing her hours to 16 per week; phased return to work; flexible approach to hours of work and workload.

78. Ms Sutherland met with the claimant for a welfare meeting on 1 September 2023. One of the points Ms Sutherland explained was that the issue of adjustments would be discussed once the claimant was ready to return to work. There was also discussion regarding the claimant's interest in redeployment and whether the claimant had looked at any vacancies. Ms Sutherland explained the redeployment process to the claimant and clarified that all teams at Hillington worked in the office at least 2 days per week and there were no roles where it was possible to work from home full time.

Medical capability procedure

79. The respondent's Attendance Management Policy and Procedure was produced at page 146.

80. Ms Sutherland invited the claimant to attend a formal medical capability hearing, the purpose of which was to determine the claimant's long term fitness for work and to ascertain whether the claimant would be able to sustain regular attendance within a reasonable timescale.

81. The hearing took place on 12 September 2023 and the claimant attended with Mr Alan Bennett, trade union representative. Ms Sutherland was accompanied by Ms McCartney, HR, who took notes (page 383). The occupational health report was read out by Ms Sutherland and there was a lengthy discussion regarding the current position in respect of each of the claimant's impairments and their impact; the claimant's absence and the adjustments which had been made to assist her. The discussion then turned to the recommendations in the report and Ms Sutherland went through each of the suggested adjustments with the claimant. Ms Sutherland noted that the claimant wished redeployment to work in a role with the option of working from home. Ms Sutherland confirmed this was not possible in her team due to the nature of the work, however there may be other roles the claimant could identify and apply for. The claimant confirmed that she had not, in the period since the last welfare meeting in September, looked at the vacancy list.

82. Ms Sutherland had, prior to the hearing, explored whether the claimant's hours could be reduced. She was advised by the Operations team that due to the demands of the role and the requirements to meet the Service Level Agreement targets, there were to be no roles working less than 22.5 hours per week.

83. Ms Sutherland explained the respondent had looked into alternative roles. Ms Cairns had, on the 20 June (page 371) contacted the Recruitment department to enquire whether there were any part time roles (16 – 20 hours per week) available. Ms McDonald responded to say there were no part time roles available in Glasgow or Hillington at that time. Ms Cairns followed this up again in July, but it was again confirmed there were no part time roles available.

84. Ms Sutherland explained to the claimant how redeployment worked and made it clear that employees seeking redeployment were required to identify and apply for jobs, and had a 12 week period to do so. Ms Sutherland explored with the claimant what she thought she may be able to do and there was reference to telephone work, although keyboard operation may present a difficulty.

85. The adjustments in relation to a phased return to work, alteration of workload and time off to attend health assessments had all been accommodated by the respondent.

86. The hearing was adjourned and reconvened on 27 September to deliver Ms Sutherland's decision. Ms Sutherland, having considered all of the available information and noting the claimant was not fit for work, could give no indication of when she may be fit to return and had submitted a fit note for a further period of absence, made the decision to dismiss the claimant with 12 weeks' notice. This was confirmed to the claimant in a letter dated 29 September (page 397).

87. The claimant exercised her right to appeal against the decision to dismiss (page 400). The claimant was invited to attend an appeal hearing which took place on 12 October 2023. Ms Jacqueline Brown, Operations Manager, heard the appeal. The claimant attended with Mr Bennett, trade union representative. Ms Cressey, HR, attended to take notes, which were produced at page 403.

88. The claimant challenged the fairness of her dismissal because she considered the respondent had not followed the redeployment policy, or considered a career break or considered an alternative role or reducing her hours. The claimant argued that if she had been offered a less physical role she would have been able to return to work sooner, but she produced no evidence to support that position. The claimant also raised race discrimination but apart from asserting she had been treated differently from others, the claimant was unable to provide Ms Brown with any details of this.

89. Ms Brown discussed with the claimant her fitness to return to work, noting the claimant had submitted a fit note for a further period of two months. Ms Brown explored with the claimant the type of role she was looking for and whether the claimant had identified and applied for any roles, noting that telephone-based roles were at a higher grade than the claimant's current role. The claimant was aware all job vacancies were posted on the respondent's Workday system, but she had not had access to this whilst absent.

90. Ms Brown had regard to the suggested adjustments noted in the occupational health report and the claimant's argument that none had been put in place. Ms Brown explained to the claimant that consideration of making the adjustments would take place once the claimant was fit to return to work. Ms Brown noted the claimant wished to work from home and advised the respondent was not a working-from-home company and the Hybrid Working policy detailed how many days employees required to be present in the office, but this was subject to the needs of each department.

91. Ms Brown reviewed all paperwork following the appeal hearing and had regard to the Redeployment policy. Ms Brown was satisfied the respondent had explored redeployment options for the claimant and a reduction to her hours of work. Ms Cairns (HR) had contacted the recruitment team to see if there were areas of the business in Glasgow which had part-time vacancies, but there were no suitable roles for the claimant.

92. Ms Brown noted a career break had not been considered. Ms Brown had regard to the Holiday and Time Off Policy regarding the issue of a career break and noted section 8.2.2 of the policy stated that a career break can only be used where the reason for absence was not covered by another policy. The claimant's absence was covered by the Attendance Management Policy and therefore a career break was not an option because a career break cannot be used to cover sickness absence.

93. Ms Brown reviewed the notes of the medical capability hearing and the occupational health report. She was satisfied reasonable adjustments had been put in place for the claimant (for example, a phased return to work, a period of working from home, adjustment of the claimant's workload and agreeing the flexible working request to adjust the claimant's start and finish times to help with childcare).

94. Ms Brown could not investigate the claimant's allegation of racial discrimination because the claimant did not submit any information for consideration.

95. Ms Brown decided to dismiss the claimant's appeal for these reasons and this as confirmed in writing to the claimant on 17 October 2023 (page 409).

96. The respondent produced a document (page 437) detailing all vacancies in the period August 2022 to December 2023. There were no vacancies at the claimant's grade and the claimant did not identify any jobs on the list which may have been suitable for her.

Since dismissal

97. The claimant has been in receipt of Employment Support Allowance since August 2023.

98. The claimant has not applied for any jobs in the period since her dismissal. The claimant asserted there were no jobs which suited the hours she wished to work. The claimant was referred to a number of jobs which the respondent had identified (pages 453 – 472). The claimant accepted that at least one of the job roles (page 462), which offered part time, home working with flexible hours, would have been suitable for her, but she had not seen this advertised.

99. The claimant had expressed an interest in setting up her own business as a travel agent, but she had not set up a website and had not undertaken the necessary training.

Timebar

100. The last alleged act of discrimination occurred on 10 February 2023. The flexible working request was made on 21 December 2022. The claimant contacted ACAS for early conciliation on 24 October 2023 and received the early conciliation certificate on 8 November 2023. The claim was presented on 22 January 2024.

101. The claimant provided some documentation of emails between herself, her trade union representative Mr Bennett and the PCS union legal department, regarding a claim. The documents demonstrated that there was discussion regarding pursuing a claim and whether the trade union would support it. Those discussions appeared to have started in late November 2023.

Ultimately the trade union decided it could not support the claim and the claimant was provided with advice (on or about 27 December) regarding making a claim and the time limits for doing so.

Credibility and notes on the evidence

102. The claimant's case was that she had previously had a hybrid working arrangement in place but this had been abandoned when the claimant moved to Ms Sutherland's team. The claimant felt there were duties she could have carried out whilst working from home and she did not accept she was required to be in the office on as many days as Ms Sutherland demanded. The claimant accepted adjustments had been put in place, but she argued that had not been on a permanent basis.

103. The claimant felt her personal and health issues had not been properly considered by Ms Sutherland. The claimant also felt she had been treated unfairly, and differently from others when Ms Sutherland asked her to produce proof of ticket purchases for holidays for Umrah, and when she was asked to work in the office when she had covid.

104. The claimant believed the welfare meeting on 10 February 2023 was to challenge her attendance at the Sheku Bayoh inquiry, and she alleged Ms Sutherland had said to her that if she was fit enough to attend the inquiry she was fit enough to come to work.

105. The claimant disagreed with her dismissal and argued that adjustments such as redeployment, reduction of hours and duties, a career break or something could have been done to keep her in work.

106. The Tribunal did not find the claimant to be an entirely reliable witness. The claimant had a practice of making assertions about things said to, or by, Ms Sutherland, but when challenged about them, she would assert it had been a verbal discussion with no record or note of it. The claimant also challenged the notes of all the meetings, and asserted things had been omitted or not noted correctly, yet she provided no evidence of raising this at the time and when she had an opportunity to do so.

107. The claimant, at the welfare meeting on 10 February 2023, was asked questions about her attendance at the inquiry. Ms Sutherland noted the claimant had told her, in December, that she had been told she was to give her statement, and that she was waiting for a date for the inquiry. Ms Sutherland queried why the claimant had not told them the date of the inquiry, because they would have provided any support the claimant may have needed. The claimant told Ms Sutherland that she didn't know when she had been told the date of the inquiry, and then suggested it had only been "quite late" on the Tuesday (that is, the day prior to the inquiry), that she had found out. The claimant referred to having been told she could not discuss anything with anyone. Ms Sutherland acknowledged that it must have been "very difficult" and the claimant stated *"I was terrified, and they were at my door, two guys from the court just came to my door and told me that I had to go with them, I don't know who they were, I think they were Sheriffs or something. I went with them in their car to the court. …. The 2 men helped me into the court … I didn't know it was going to be on tv…"*

108. The claimant totally undermined what she had told the respondent when she called Ms Niamat as a witness at this hearing, and Ms Niamat confirmed she had given the claimant a lift to the inquiry on 8 February.

109. The Tribunal found Ms Niamat to be a credible and reliable witness. There was a dispute between the claimant's suggestion that Ms Sutherland had phoned her on 8 February. Ms Sutherland denied making a call to the claimant on 8 February. This dispute was resolved when the claimant, in fact, in her evidence, stated that she had phoned Ms Sutherland. Ms Niamat supported that position and the document produced by the claimant prior to her submission (being a record of phone calls made) confirmed the claimant had made a phone call to a Glasgow telephone number believed to be Ms Sutherland at 08.35 on 8 February. The Tribunal accepted the call made on 8 February had been made by the claimant to Ms Sutherland.

110. The Tribunal found the respondent's witnesses were credible and reliable. They gave their evidence in a straightforward manner and responded fully to all of the claimant's questions. The evidence of the respondent's witnesses

was supported by the documentation, for example, the notes of the meetings, which had been provided to the claimant for review and comment and agreement.

Submissions

111. The respondent prepared a written submission which was spoken to. The submissions points are dealt with below.

112. The claimant also prepared a written submission. The claimant did not speak to this but instead invited the Tribunal to read it. The submission points raised by the claimant are dealt with below.

Discussion and Decision

Timebar

113. The respondent's position was that the claims of discrimination (that is, the complaint of failure to make reasonable adjustments, disability-related harassment and direct discrimination because of religion) and the claim regarding a flexible working request, had all been presented late and the Tribunal therefore did not have jurisdiction to consider them.

114. The claimant accepted the last alleged act of discrimination took place on the 10 February 2023, and that she had contacted ACAS for early conciliation on 24 October 2023. The claimant was unsure of the time limits for claims, had not tried to find out about this and had left it to the trade union.

115. There was no dispute that the claim in respect of unfair dismissal was presented by the claimant within the applicable time limit. The issue of timebar related solely to the complaints of discrimination and the flexible working request. There was no suggestion that the dismissal had been discriminatory.

116. The Tribunal had regard to the relevant statutory provisions being section 123 Equality Act 2010 and section 80H Employment Rights Act 1996. Section 123 Equality Act provides that a claim may not be brought after the end of the period of three months starting with the date of the act to which the complaint relates, or such other period as the Employment Tribunal thinks just and

equitable. Section 80H Employment Rights Act provides that an employment Tribunal shall not consider a complaint under this section unless it is presented before the end of the period of three months beginning with the relevant date or within such further period as the Tribunal considers reasonable in a case where it is satisfied it was not reasonably practicable for the complaint to be presented before the end of that period of three months. The reference to "relevant date" is a reference to the first date on which the employee may make a complaint under subsection (1)(a), (b) or (c) as the case may be.

117. The claimant brought claims of disability discrimination in terms of a failure to make reasonable adjustments (section 20 Equality Act) and harassment (section 26 Equality Act). The claimant also brought a claim of religious discrimination in terms of direct discrimination (section 13 Equality Act). Those claims may, in terms of section 123 Equality Act, not be brought after the end of the period of three months starting with the date of the act to which the complaint relates. There was agreement between the parties that the last alleged act of discrimination took place on the 10 February 2023 (there was no argument that the dismissal of the claimant had been an act of alleged discrimination). The claimant had a period of three months from that date in which to contact ACAS for early conciliation or present a claim to the employment tribunal. The claimant did not contact ACAS until 24 October 2023. This was 5 months outwith the time limit for doing so. The claimant did not present a claim to the Employment Tribunal until 22 January 2024. The claim was presented late.

118. The Tribunal must consider whether it would be just and equitable to extend the time limit. The claimant gave very limited evidence regarding this point: her position was, essentially, that she did not know about time limits and had left it to the trade union. The Tribunal acknowledged the claimant had clearly hoped the trade union would support her claim, but there was no evidence before the Tribunal regarding when the claimant had first discussed making a claim with the trade union or what that claim might have been.

119. The Tribunal decided there was no evidence to allow it to conclude that it would be just and equitable to extend the time limit for the presentation of the discrimination claim. The Tribunal reached that decision because whilst we acknowledged the claimant was consulting with the trade union regarding support for her claim, there was no evidence to suggest when those discussions started and no evidence to suggest the discussions were in connection with a discrimination complaint as framed by the claimant. Further, we noted the documents produced by the claimant included emails between her and the trade union, and in those emails there was reference to the claimant having been given advice regarding timescales for making a claim. There was also no evidence before the tribunal to suggest why contact with ACAS could not have been made earlier, and no evidence why the claim could not have been presented earlier.

120. The Tribunal decided the discrimination complaints had been presented late; that it would not be just and equitable to extend the time limit for presentation of those claims, and accordingly a Tribunal does not have jurisdiction to determine those claims.

121. The Tribunal next asked whether it was reasonably practicable for the claim in respect of a flexible working request to have been presented within three months starting with the relevant date. The Tribunal found as a matter of fact that the claimant made a flexible working request on 21 December 2022. The claimant did not contact ACAS for early conciliation until 24 October 2023 and presented the claim to the Employment Tribunal on 22 January 2024. The claim has been presented late.

122. The claimant argued it had not been reasonably practicable to present the claim in time because she had left it to the trade union. We decided, based on the reasons set out above, that it had been reasonably practicable for the claim to be presented in time. We say that because the claim could have been presented either by the trade union or the claimant within the time limits. The claimant argued that she did not know about the time limits for presenting a claim, however the claimant, by her own admission, took no steps to inform herself of the time limits. The claimant's position was also undermined by the

correspondence she produced between herself and the trade union where it was clear that once the claimant consulted the trade union regarding a claim, she had been given advice by the trade union regarding time limits. There was correspondence from the trade union officer questioning why the claimant had not yet presented the claim. The Tribunal was accordingly satisfied that the claimant could have obtained advice regarding time limits and that it had been reasonably practicable for the claim to have been presented in time.

123. The Tribunal decided it had been reasonably practicable to present the claim in time. The claim was not presented in time and a Tribunal has no jurisdiction to determine the claim.

124. We should state that we have gone on to determine the discrimination complaints and the flexible working complaint. We have adopted this approach should we have erred in our decision those claims are time barred.

The flexible working request

125. The issues for the Tribunal to determine are (i) did the claimant make a flexible working request under section 80F Employment Rights Act in or about August 2022; (ii) if so, did the respondent comply with its duties as set out in section 80G Employment Rights Act and (iii) was that application disposed of by agreement or withdrawn.

126. The Tribunal had regard to the terms of section 80F Employment Rights Act. The section provides that an employee may apply to their employer for a change in the hours they work, the times they work or where they work The application must state that it is such an application, specify the change applied for and the date on which it is proposed the change should become effective and explain what effect if any the employee thinks making the change applied for would have on his employer and how this might be dealt with.

127. The claimant's evidence was that in August 2022 when she joined Ms Sutherland's team, she raised her concerns (on 11 August and 24 August) that Ms Sutherland was not going to allow the hybrid working arrangements to continue, and was not going to allow flexible working either. Ms Sutherland

acknowledged there had been discussions and she had referred the claimant to the relevant policy, but Ms Sutherland's position was that there was no flexible working request in August 2022.

128. The Tribunal noted the claimant joined Ms Sutherland's team in May 2022. The claimant was on a period of sickness absence and did not return to work until August 2022. There was no dispute regarding the fact Ms Sutherland and the claimant had discussions regarding the claimant's move into the team, the structure of the team, the work the claimant would be doing and the working arrangements in respect of the claimant's return to work. There was also no dispute regarding the fact a phased return to work was agreed, and extended and there was also a period of working from home to accommodate the claimant's childcare, which was also extended.

129. The claimant had a hybrid working arrangement in her previous role. This had been introduced as part of the covid working arrangements and was subject to change as the covid pandemic progressed. The respondent's Hybrid Working Policy (page 174) was introduced in 2021, and made clear that the ability to work from home would always be subject to business needs and some roles may require an employee to be in the workplace either more often or at specific times. The respondent retained the right to ask employees to work from the workplace on more days if required and it was for each department to decide upon their business needs.

130. The claimant was unhappy to learn that the hybrid working arrangements which had previously been in place, could not continue. Ms Sutherland explained that the reason for this was due to the nature of the work carried out by her team, which meant that there were times during peak periods when no-one could work at home, and times during non-peak periods when hybrid working would be permitted.

131. The Tribunal, based on the evidence before it, found as a matter of fact that although there were discussions between Ms Sutherland and the claimant regarding working from home and flexibility, the claimant did not make a flexible working request in August 2022. The claimant's flexible working

request in respect of her hours of work was made much later, in December 2022.

132. The Tribunal decided the claimant did not make a flexible working request in August 2022, and for these reasons, we decided to dismiss this claim.

Disability discrimination – failure to make reasonable adjustments

133. The issues to be determined by the Tribunal are: (i) on the claimant's return to work in or about 13 January 2023, did the respondent require the claimant to work all or part of her 20 hours per week in the office; (ii) if so, was this a provision, criterion or practice (PCP) for the purposes of section 20 Equality Act; (iii) if so, did the PCP put the claimant at the substantial disadvantage of not being able to cope with her work, resulting in her being off sick again from 26 January 2023; (iv) did the respondent know, or ought reasonable to have known, the claimant had the disability and that she was likely to be placed at this disadvantage and (v) would it have been reasonable for the respondent to make the adjustments of allowing the claimant to work her 20 hours per week from home, or allowing the claimant hybrid working with fewer days in the office and more at home.

134. The Tribunal had regard to the terms of section 20 Equality Act, which provides that where a provision, criterion or practice of the employer puts a disabled person at a substantial disadvantage in comparison with persons who are not disabled, there is a duty to take such steps as it is reasonable to have to take to avoid the disadvantage.

135. The Tribunal noted the issues for determination (as set out above) focussed the PCP on the point in time when the claimant was returning to work in January 2023 following having covid and working from home for 3 days. The claimant returned to work on Thursday 19 January until Wednesday 25 January when she went off on sickness absence. The claimant's evidence was that she twice asked to work from home and this was refused by Ms Sutherland.

136. Ms Sutherland's evidence was that people in her team were, at that time, working from home one day per week. The Tribunal assumed, in the absence of any evidence to the contrary, that the claimant also did this during the week when she returned to work.

137. The Tribunal was satisfied there was a PCP in place requiring employees to work most of their working hours in the office.

138. The Tribunal next asked if this PCP put the claimant at a substantial disadvantage. The claimant's evidence was that she was still testing positive for covid, and that she had not recovered fully from Covid inasmuch as she struggled with driving to work, vision being poor, headaches, body aches and fever. In addition to this her children were still testing positive for covid.

139. Ms Sutherland's evidence was that the claimant had requested annual leave on 22, 28 and 29 December and 4 January 2023. The claimant had contacted Ms Sutherland during her annual leave to advise her she and the children had all caught covid. The claimant had been due to return to work on 9 January but called in sick. The claimant was absent for 5 days and returned to work on 16 January. The claimant was permitted to work from home on 16, 17 and 18 January 2023 because she felt fit to return to work but not fit enough to come into the office. The claimant returned to work in the office on 19 January because she was no longer testing positive and advised that she felt fit to return to the office.

140. The Tribunal preferred the evidence of Ms Sutherland, that the claimant returned to work in the office because she was no longer testing positive and felt fit enough to do so. We preferred this evidence because the claimant (as all employees were) was required to submit proof of the covid test and result, and in terms of the policy, if the claimant had continued to test positive for covid some weeks after her initial test, there would have been no requirement for her to return to work in the office.

141. The claimant's evidence was that she told Ms Sutherland that she was struggling to cope with her work because of her disability (which we understood, at this time, was long-covid). Ms Sutherland denied this and

clarified that although the claimant had, on occasion, asked to work from home, this was not ever because of disability, but because of childcare. The Tribunal noted that the claimant contracted covid again and visited her GP towards the end of January when post-covid symptoms (also called long-covid) was diagnosed and the claimant was signed off as unfit for work. The Tribunal noted the claimant was fit for work in the period 19 – 25 January.

142. The Tribunal concluded from these facts that the claimant was not put at a substantial disadvantage, by the PCP, in comparison with persons who are not disabled. We reached that conclusion because the claimant was no longer testing positive for covid and was fit to return to work. There was no obligation on the claimant to return to work if she was not fit to do so.

143. The Tribunal, if it had found substantial disadvantage, would have found the respondent did not know, and could not reasonably have known, the claimant had the disability and would be put to the substantial disadvantage. We say that because we preferred the evidence of Ms Sutherland that the claimant had not ever told her she was not coping with work because of disability/post-covid symptoms.

144. The Tribunal, if it had found the respondent knew, or ought reasonably to have known, the PCP would put the claimant at a substantial disadvantage, would have had to consider whether it would have been reasonable to allow the claimant to work from home or to allow hybrid working with more days at home than in the office. The Tribunal concluded those adjustments were not reasonable given the nature of the respondent's work. The Tribunal accepted Ms Sutherland's evidence that the nature of the work carried out by her team is office based. There is no home working during peak periods, and during non-peak periods, hybrid working of 1 day per week may be granted but this is subject to business needs.

145. The period in question (January) was a non-peak period and therefore hybrid working was available in Ms Sutherland's team. However, hybrid working must be managed in accordance with business needs which include the number of employees off sick, or off on holiday or for other reasons. The

Tribunal concluded the adjustment of allowing the claimant hybrid working involving more than one day per week at home would not have been reasonable. We say that for two reasons: first, because the respondent requires sufficient staff at work in order to process the work and meet the timescales set out in the service level agreements and second, because there is limited work for employees to do at home. Ms Sutherland's evidence, which we accepted, was that there were limited duties which could be done at home, for example, Returns. There was insufficient work which could be done at home to allow the claimant to work more days at home than in the office, and this was particularly so when the claimant still had to be trained on certain duties.

146. The Tribunal further decided that an adjustment to allow the claimant to work from home was not reasonable because Ms Sutherland did not have sufficient work in her team which could be done at home. Ms Sutherland's team is an office based team due to the nature of their work and there would not have been sufficient work for the claimant to carry out at home.

147. The Tribunal decided this aspect of the claim is timebarred, but if we have erred in this, we decided, for all of the above reasons, to dismiss this claim.

Disability discrimination – harassment

148. The issue to be determined is whether Ms Sutherland's conduct during telephone calls on 6 and 8 February 2023 amount to unwanted conduct related to the claimant's disability and if so, whether the conduct had the purpose or effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant.

149. The Tribunal had regard to section 26 Equality Act which provides that a person harasses another if the person engages in unwanted conduct related to a relevant protected characteristic and the conduct has the purpose or effect of violating the other's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment. Section 26(4) further provides that in deciding whether conduct has the effect referred to (above) each of the following must be taken into account: (a) the perception of the

employee; (b) the other circumstances of the case and (c) whether it is reasonable for the conduct to have that effect.

150. The Tribunal had regard firstly to the alleged conduct and determined whether the conduct occurred. The claimant alleged that Ms Sutherland had instructed her to contact Ms Sutherland before each sick line expired to confirm whether her absence was to continue or not. On or about 6 February 20223 the claimant called Ms Sutherland and said that she would continue to be off sick and would hand in a further sick line shortly. Ms Sutherland told the claimant she had called too early. The claimant replied that Ms Sutherland had asked her to call before the sick line ran out. Ms Sutherland then questioned the claimant about how long she would be off; what symptoms she had; what the doctors were doing to help her; whether the doctors' appointments had been by telephone or face to face; what medications the claimant had been prescribed and what physical things she could and could not do.

151. Ms Sutherland's evidence was that the claimant phoned and left a voicemail for her on 6 February advising that she would not be able to do the welfare meeting which had been planned for 8 February. The claimant also advised that she had been given another fit note for one week. Ms Sutherland returned the claimant's call and there was a discussion regarding the current fit note which expired on 8 February and the claimant's intention to seek another fit note from her GP. Ms Sutherland denied stating the claimant had called in too early. Ms Sutherland was expecting the claimant's call that week in order to provide an update regarding the expiration of the fit note.

152. The Tribunal having had regard to the evidence of the witnesses noted there appeared to be no dispute regarding the fact that the practice was for employees to contact Ms Sutherland prior to the expiry of their fit note, to advise if they would be returning to work. The claimant's fit note was due to expire on 8 February. The tribunal preferred the evidence of Ms Sutherland that she did not say to the claimant that she had called too early. We preferred this evidence because understanding whether the employee will be returning to work at the end of the fit note, or whether the absence may be continuing for a further period, is all part of absence management, and it appeared to the

Tribunal that the suggestion Ms Sutherland wanted the claimant to phone on the day the fit note expired, simply did not fit with managing absence and planning for any return to work (or not, as the case may be).

153. The Tribunal next noted that the welfare meeting planned for 8 February was not going to take place because the claimant was unable to attend. The Tribunal accepted, in those circumstances, that Ms Sutherland may very well have had a lengthier discussion with the claimant, of the nature described by the claimant.

154. The Tribunal asked whether this was unwanted conduct. The claimant stated she felt she was being "interrogated". The Tribunal, in considering this, noted the claimant, by her own admission was in a highly anxious state due to attendance at the inquiry on 8 February. We further noted that the questions asked by Ms Sutherland would all have been usual questions covered in an absence management meeting or welfare meeting, particularly as the claimant was absent with long-covid, which was a relatively new condition. The Tribunal, notwithstanding these points, acknowledged that "unwanted" must be viewed from the perspective of the claimant, and accordingly we accepted it was unwanted conduct.

155. We next asked whether the conduct had the purpose or effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment. The Tribunal must take into account the claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

156. The Tribunal noted the claimant's perception of Ms Sutherland's questions was that it was an "interrogation". The claimant was, by her own admission, in a highly anxious state during the phone call due to her attendance at the inquiry on the Wednesday. The claimant was also anxious about the fact she had not informed Ms Sutherland of the date for the inquiry, albeit she had made her employer aware of the fact she would be called to attend. The Tribunal noted above that the questions asked by Ms Sutherland were usual questions asked at an attendance management or welfare meeting. The

questions are designed to allow the respondent to understand the nature of the illness causing the absence from work, the prognosis and what support could be offered to the claimant.

157. The Tribunal, having had regard to those points, concluded the purpose or effect of the conduct was not to violate the claimant's dignity or to create an intimidating, hostile, degrading, humiliating or offensive environment for the claimant. We say that because the purpose of the questions was to inform the respondent of the nature of the illness causing the absence from work, the prognosis and what support could be offered by the respondent. The Tribunal was satisfied it would not be reasonable for the respondent's questions, in the circumstances of the case, to have the effect of violating the claimant's dignity or creating a hostile environment.

158. The Tribunal next considered the second alleged act of harassment which was that on or about 8 February the claimant was called under citation as a witness to give evidence at the public inquiry into the death in police custody of Sheku Bayoh. Later that day the claimant handed in her repeat sick line to the respondent. That evening the claimant was shown on television attending the inquiry. Ms Sutherland saw that the claimant had attended the inquiry while off sick and she sent the claimant a message or messages. On or about 10 February Ms Sutherland telephoned the claimant and questioned her again about her health. She asked the claimant about her citation to give evidence at the inquiry. In particular she asked the claimant *"Is that the reason why you phoned me on Monday to say you would be off on Wednesday?"* The claimant understood this to imply that she had been lying about her health. The claimant replied *"No I called because you told me to call a few days before the line runs out"* The claimant told Ms Sutherland she had had to attend the inquiry and could not get out of it. Ms Sutherland asked the claimant what reasonable adjustments had been made for her by the court, and why she had attended court if she was unwell. She went over the details of the claimant's health issues again. Ms Sutherland told the claimant that if she was well enough to be at court she was well enough to be at work.

159. The Tribunal, in considering whether what was alleged, occurred, had regard to the fact the claimant did not produce any message or messages allegedly sent to her from Ms Sutherland on 8 February. The claimant did produce a record of her phone calls which showed that at 08.35 on 8 February she had made a call to a Glasgow number which she asserted was Ms Sutherland's number. This document was produced after all of the evidence had been heard and therefore it was not possible for this to be put to any witnesses.

160. The Tribunal did hear evidence from Ms Niamat who took the claimant to the inquiry, Ms Niamat told the Tribunal that whilst driving the claimant to Edinburgh, she heard the claimant's telephone discussion with Ms Sutherland because it was on speaker phone. We accepted Ms Niamat's evidence and found as a matter of fact that the claimant phoned Ms Sutherland at or about 9am on the morning of 8 February.

161. The Tribunal did not accept the claimant's assertion that there had been a further phone call with Ms Sutherland on 10 February. The Tribunal found as a matter of fact that a welfare meeting (conducted remotely via Teams) was held on 10 February with Ms Sutherland and Ms Cairns present with the claimant. This welfare meeting was arranged after Ms Sutherland was informed, by her line manager, that the claimant had been on television at the inquiry. Ms Sutherland had, prior to this, been unaware of the inquiry taking place that day and unaware of the claimant's attendance.

162. We accepted Ms Sutherland's evidence that the purpose of the welfare meeting was to support the claimant because it was recognised that attendance at the inquiry was stressful (traumatic) for the claimant. We further accepted Ms Sutherland's evidence that she had not made the comments alleged by the claimant. We preferred Ms Sutherland's evidence because it was supported by Ms Cairns and the notes of the meeting.

163. The Tribunal concluded, for these reasons, that the conduct alleged by the claimant did not take place. The respondent understood and accepted the claimant had no choice whether to attend the inquiry: she had been cited to

appear as a witness. The respondent was not critical of the claimant for attending the inquiry.

164. The Tribunal decided the complaint of harassment was timebarred and, if we have erred in that decision, the complaint of harassment is dismissed for the above reasons.

Direct discrimination because of the protected characteristic of religion

165. The issues to be determined by the Tribunal are:

(i) did Ms Sutherland treat the claimant less favourably in the following ways because of the claimant's Muslim religion:

(a) in or about December 2022 the claimant had a conversation with Ms Sutherland in which she asked to book two weeks' holiday during Ramadan in April 2023 in order to go on a pilgrimage. In the same conversation the claimant asked if she could work from home or take unpaid leave during the remainder of Ramadan in April 2023. Ms Sutherland said that holidays had not been approved for anyone at that time and that the claimant would not be able to get that time off. She said the claimant would need to provide proof as in flight details, how long she was going to be away, the dates and booking confirmation. The claimant's father was arranging the trip so the claimant said she would get the information. The claimant then sent Ms Sutherland an email. After the claimant sent the email, Ms Sutherland took the claimant into her office. The claimant told Ms Sutherland she thought it was unfair because booking details had not been requested from other employees requesting holidays at that time, so why had she been asked for them. Ms Sutherland said that that was how it worked according to the policy.

(b) In connection with the claimant's request to work from home or take unpaid leave for the remainder of Ramadan, Ms Sutherland told her that neither option was available.

(c) On other occasions around that time, Ms Sutherland questioned the claimant about her religion. She asked her why she needed time off to do things for her religion; why she could not work in the office or fast in the office. The claimant's previous managers had allowed her to take unpaid leave or work from home for the full month of Ramadan without questioning her about it.

(d) When the claimant or members of her close family had covid in or about January 2023 the claimant had been required to come into the office, whereas other members of the team (Catrina, Stuart, John and Catherine) were allowed to work from him when they had covid.

(ii) The comparator in relation to (a), (b) and (c) above is a hypothetical comparator who does not practise the Muslim religion, but whose material circumstances are otherwise the same as the claimant.

166. The Tribunal had regard to the terms of section 13 Equality Act which provides that a person discriminates against another if, because of a protected characteristic, the person treats the other less favourably than they treat, or would treat, others. We also had regard to section 23 Equality Act which provides that on a comparison of cases for the purposes of section 13, there must be no material difference between the circumstances relating to each case.

167. The Tribunal also had regard to the case of ***Nagarajan v London Regional Transport 1999 IRLR 572*** where the House of Lords stated that the correct test for determining the reason for any alleged less favourable treatment is to ask what was the person's conscious or subconscious reason for treating the employee less favourably? This involves by necessity considering the respondent's subjective thought processes at the relevant time.

168. The Tribunal noted there was no dispute regarding the fact the claimant did make a request for holidays for Umrah and Ramadan. There was a dispute regarding the date this had been done. The Tribunal accepted the evidence of Ms Sutherland, and we did so because the claimant's request and Ms Sutherland's response were noted on the respondent's IT system, Workday and in emails (page 350 – 345). The Tribunal accepted the claimant submitted a request via Workday on 17 January 2023, seeking time off for Umrah on the 27 March to 30 March 2023. Ms Sutherland responded the same day asking the claimant to provide further details regarding the request. Ms Sutherland did this because annual leave was already at "over allocation" with the maximum number of people in the team allowed off. Ms Sutherland sought further information to allow the claimant's request to be considered as an exception.

169. Ms Sutherland accepted the claimant had sent an email to her on 23 January 2023 asking for time off that same week for Ramadan. The email also confirmed the claimant did not yet have details of travel because her father was arranging it.

170. The claimant's complaint was that she had been treated less favourably because she had been asked to provide booking details, whereas other employees were not asked for this information. The comparator in this instance was a hypothetical comparator who would be an employee who made a request for time off at the same time as the claimant, but not for religious purposes. The Tribunal, in considering the claimant's claim, had regard to the respondent's Holiday Policy, which makes clear that all holidays are subject to business needs. Ms Sutherland's evidence, which the Tribunal accepted, was that her team were already at "over allocation". This, we understood, meant that the number of people from the team who could, based on business needs, be on holiday, had already been granted holidays.

171. The Tribunal was satisfied that in those circumstances, employees who subsequently requested annual leave in that period, would be asked for further information. The purpose of this was so that Ms Sutherland could investigate with her line manager whether an exception could be made. The

Tribunal concluded for these reasons that the claimant was not treated less favourably: she was treated in the same way a hypothetical comparator would have been.

172. The Tribunal, with regard to the second allegation of less favourable treatment, noted the claimant, in her emails to Ms Sutherland dated 23 and 24 January 2023 (page 350) requested a temporary change of shift for the month of Ramadan, working 9.30am to 1.30pm. The claimant understood that, for business needs reasons, she could not work at home for the full month, but she asked if it would be possible to work 2 days a week from home. The claimant's position was that Ms Sutherland told her neither option was available.

173. The Tribunal noted that Ms Sutherland responded to the claimant's email on 24 January (page 349) and stated that with regards to the temporary shift, she would need to look at availability, and also take into account headcount in the office, work volumes and also work available to carry out at home because all tasks were manual and carried out in the office. Ms Sutherland did not have the opportunity to go back to the claimant with her decision because the claimant went off on sickness absence on 25 January 2023.

174. The Tribunal, based on the evidence before it and in particular the emails between the claimant and Ms Sutherland, concluded there was no less favourable treatment of the claimant in circumstances where the claimant went off on sickness absence before a decision could be made.

175. The Tribunal next considered the third allegation of less favourable treatment. The Tribunal noted the claimant did not, in her evidence, provide any details of this allegation and did not cross examine Ms Sutherland about the allegations. The Tribunal, in the circumstances, accepted Ms Sutherland's evidence that the alleged conduct did not take place. We concluded therefore that there was no less favourable conduct.

176. The fourth alleged instance of less favourable conduct was that the claimant had been required to come into the office to work when she had covid, whereas other members of the team had been allowed to work from home.

The claimant named four actual comparators from her team: Catrina, Stuart, John and Catherine.

177. The Tribunal found as a matter of fact that the respondent had in place, at the relevant time, its Supporting Attendance – Covid 19 policy. This policy (page 209) made clear that an employee in self-isolation, who is fit for work should work from home where this is possible. If working from home was not possible, reasonable alternative duties should be explored in the first instance and if such duties could not be undertaken, then the absence would be recorded as set out in the next section. The Tribunal accepted Ms Sutherland's evidence that her team adopted this approach and that if anyone in the team tested positive, they were required to work from home even during peak periods.

178. There was no dispute regarding the fact the claimant reported to Ms Sutherland, in early January, that she had covid. The claimant, through a combination of sickness absence and working from home, did not return to work until 19 January. The claimant maintained that she was made to return to work in the office despite still having covid. The Tribunal preferred the evidence of Ms Sutherland and found as a matter of fact that the claimant returned to work in the office because she was no longer testing positive for covid and felt fit to return to work.

179. The claimant asserted she had been treated differently from four named comparators. Ms Sutherland confirmed that Catrina had contracted Covid and worked from home in November 2022, but Stuart, Joe (not John as alleged) and Christine (not Catherine as alleged) had not contracted covid. There was no evidence before the Tribunal to inform us how long Catrina had worked from home before returning to work in the office. It was not therefore possible, on the basis of the evidence before us, to understand whether there had been any different treatment, particularly in circumstances where the claimant had been permitted to work at home for a period of time.

180. The Tribunal concluded that the less favourable treatment alleged by the claimant did not occur because the claimant was not treated less favourably

than her named comparators. We say that because the claimant returned to work in the office when she was no longer testing positive for covid and felt fit to do so. This is what other staff did and was in line with the policy applied to other staff .

181. The Tribunal, for the reasons set out above in relation to each alleged act of less favourable treatment, decided to dismiss this complaint.

Unfair dismissal

182. The issue to be determined by the Tribunal is whether the dismissal of the claimant, with notice, for a capability reason (ill health) was unfair.

183. The Tribunal had regard to section 98 Employment Rights Act which provides that in determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show the reason (or, if more than one, the principal reason) for the dismissal and that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held. Further, where the employed has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee and shall be determined in accordance with equity and the substantial merits of the case.

184. The Tribunal also had regard to the case of ***East Lindsey District Council v Daubney 2977 ICR 566*** where it was said that unless there are wholly exceptional circumstances, before an employee is dismissed on the ground of ill health, it is necessary that he should be consulted and the matter discussed with him, and that in one way or another steps be taken by the employer to discover the true medical position.

185. We also had regard to the cases of ***Spencer v Paragon Wallpaper Ltd 1977 ICR 301*** and ***S v Dundee City Council 2014 IRLR 131*** where it was said that Tribunal must expressly address the question of whether the employer could be expected to wait any longer for the employee to return to work. A number of relevant factors to balance when considering this are: whether other staff are available to carry out the employee's duties; the nature of the claimant's illness; the likely length of absence; the cost of continuing to employ the employee; the size of the employer and balanced against all of that, the unsatisfactory situation of having an employee on long term sickness absence.

186. We lastly had regard to the fact a fair procedure is essential, and this comprises consultation with the employee, medical investigation and consideration of other options such as alternative employment.

187. The respondent accepted it had dismissed the claimant for reasons of capability in circumstances where the claimant had been off work from 26 January 2023 until 20 December 2023 and unable to perform her duties. The claimant did not challenge this had been the reason for the dismissal: the focus of the claim was that the respondent could and should have found an alternative for her.

188. There was no dispute in this case that the respondent had consulted with the claimant during the course of her absence. Ms Sutherland met with the claimant on 10 February, 8 March, 5 April and 1 September 2023 and then at the capability hearing on 12 September 2023. There was also a large number of telephone calls between the meetings.

189. There was also no dispute regarding the fact the respondent informed themselves of the medical position and prognosis through obtaining an occupational health report (page 376). The occupational health report noted the claimant had a diagnosis of long Covid and had been absent since January 2023 after contracting covid. The claimant had also reported that she had arthritis in both shoulders with pain down both arms, and a diagnosis of type 2 diabetes. The report went on to summarise the assessment of the

claimant's capability and confirmed the outcome was that the claimant was not physically able to do her job role due to her ongoing health conditions. The report noted the claimant would benefit from adjustments to support her to manage her health conditions but recognised that it would be for management to determine if the adjustments were operationally viable in the long term. The outlook for the claimant was that long-covid was a long term condition: the claimant was still in the recovery stage and it was not clear how long the recovery would take. The report considered that the adjustments outlined would be required for 9 – 12 months before the claimant may have reached full recovery potential. However, the report could not comment on the other medical conditions reported by the claimant.

190. The occupational health report was discussed in detail with the claimant at the capability hearing on 12 September. Ms Sutherland referred to each of the conditions reported by the claimant and discussed the effect of the conditions, medication and the ability of the claimant to carry out various duties. There was also a detailed discussion of adjustments and alternative roles.

191. The Tribunal, based on the occupational health report and the detailed discussion with the claimant and her representative, concluded the respondent had taken reasonable steps to inform themselves of the true medical position in respect of the claimant's health, prognosis and ability to undertake duties.

192. The Tribunal next considered whether the respondent had considered alternatives to dismissal. The Tribunal noted that at the capability hearing the adjustments referrrf to in the occupational health report were discussed. Ms Sutherland discussed with the claimant the duties of her current role and the claimant's ability to undertake those duties; and she also discussed with the claimant what alternative duties she may be able to undertake if she returned to work.

193. Ms Sutherland discussed redeployment with the claimant and enquired whether the claimant had seen or applied for any suitable roles. The claimant

replied that there was nothing suitable. Ms Sutherland next discussed with the claimant what she would consider suitable alternative employment. Ms Sutherland had a list of vacancies within the department, which she went through with the claimant. Ms Sutherland also explained that the claimant would need to apply for the role, but the respondent could guarantee an interview if the claimant met the skills required. Ms Sutherland noted there were very few roles at the claimant's grade.

194. The claimant suggested she might be able to do call handling, but there was an issue regarding pain and keyboard skills. The call centre was also discussed but there was an issue with the hours the claimant would be required to do.

195. Ms Sutherland considered redeployment but in circumstances where the claimant had submitted a further fit note for two months, she concluded it was not appropriate. Further, Ms Sutherland explained to the claimant that in terms of the respondent's Policy, a person seeking redeployment would be placed on the redeployment list for 12 weeks and if nothing suitable was found, or if a suitable role was refused, then the respondent would proceed with a medical capability hearing. Ms Sutherland provided this explanation to the claimant because the claimant had understood the respondent would find her a suitable role to move to.

196. Ms Sutherland also considered the claimant's request to work from home. Ms Sutherland summarised the occasions when she had allowed the claimant to work from home, but explained that the pre-assessment team carried out manual work and worked full time in the office during peak periods and 1 day per week working from home in non-peak periods. Ms Sutherland further explained that the task of Returns could be done at home, but this was not a priority task. There was no option to work from home full time because there was not the work to do; the team tasks cannot be done from home; other members of the team needed to be accommodated; business needs had to be taken into account and the claimant was still undertaking training to learn all of the duties carried out by the team.

197. The claimant's hours of work could not be reduced because of business needs, training and Senior Managers had advised that the minimum hours that could be worked in that particular area was 22.5 hours per week.

198. The claimant raised the issue of a career break, but this is only available to employees who are not being managed through another policy. The claimant's absence was being managed through the Attendance Management policy and in those circumstances it was not possible for her to apply for a career break.

199. The claimant argued that the adjustments proposed in the occupational health report ought to have been made by the respondent and this would have avoided the need for dismissal. The Tribunal could not accept that argument. This was not a case where adjustments would have allowed the claimant to return to work. The EAT in the case of ***NCH Scotland v McHugh EATS0010/06*** observed that it would not be reasonable for an employer to make reasonable adjustments until there was some sign on the horizon that the employee would be returning to work. In this case there was no sign on the horizon of the claimant returning to work and, accordingly, there was no duty to make reasonable adjustments of the type proposed in the occupational health report.

200. The Tribunal next asked whether the respondent could be expected to wait any longer for the claimant to return to work. The ***Dundee City Council*** case referred to above, suggested the Tribunal, in considering this matter, should balance a number of factors, and so we carried out that exercise. We first noted that Ms Sutherland managed a team of nine people and we assumed that during the claimant's absence other members of the team had to carry out the claimant's duties. The claimant's illness was not straightforward in circumstances where she had long-covid, arthritis and type 2 diabetes. The claimant also had a number of issues under investigation, for example, her eyesight and pain management. The claimant had had periods of absence during her time in Ms Sutherland's team and had been absent from 25 January 2023 until the date of the capability hearing on 12 September 2023. There was no indication when the claimant might be fit to return to work. We

noted the claimant expressed a desire to return to work, but was unfit to do so and in fact provided a further fit note to the respondent for two months. The respondent was a relatively large employer, employing 2500 people in the UK and 200 at the site where the claimant worked. There was a cost to the employer of continuing to employ the claimant. We balanced against all of that, the unsatisfactory situation of having an employee on long term sickness absence, with no foreseeable date for a return to work. We also, in addition to these factors, had regard to the fact there were no suitable vacancies on the list of vacancies produced by the respondent.

201. The Tribunal concluded, having balanced the above factors, that the respondent could not be expected to wait any longer for the claimant to return. We say that principally because of the length of the claimant's absence and the fact there was no reasonably foreseeable date for a return to work in any capacity.

202. The Tribunal next stood back and asked the question whether the respondent had acted reasonably in dismissing the claimant. We had regard to the fact the respondent had consulted with the claimant during her absence; the respondent had informed themselves of the medical position through the occupational health report which was discussed at length with the claimant at the capability hearing and the respondent had considered alternative employment and adjustments for the claimant. In addition to this, the respondent followed a fair procedure in arranging the capability hearing and giving the claimant a right to appeal against the decision made by Ms Sutherland. The claimant exercised the right to appeal and had an opportunity to raise and discuss all of the points noted in her appeal. The Tribunal, having regard to all of these factors, concluded the decision to dismiss was reasonable.

Respondent's application for expenses

203. The respondent made an application for expenses in terms of rule 74(2) of the Employment Tribunal Rules 2024, because the final hearing listed for 3 to 10 February had had to be postponed following an application by the claimant

made on 31 January, that is, less than 7 days prior to the hearing. The respondent had objected to the application and the Tribunal had directed that all parties were to attend on 3 February. The claimant emailed the Tribunal, not copied to the respondent, to say that she would not attend. The hearing did not proceed because the claimant did not attend. The respondent only learned of the claimant's email to the tribunal dated 31 January when advised of it by the Employment Judge at the hearing. Ms Sandhu noted the claimant had previously been reminded of the need to comply with Rule 90. The respondent and it's witnesses had been out to the cost of attendance and witnesses had set aside time for a final hearing which did not proceed. In all the circumstances the respondent sought an order for costs of £777.70.

204. The claimant, in response to the application, submitted she had not realised the respondent was not copied in to her email on 31 January. The claimant asked the Tribunal not to make any award of expenses because she could not afford to pay it.

205. The Tribunal had regard first to the rule referred to. Rule 74(2) of the Employment Tribunal Rules of Procedure 2024 provides that *"The tribunal must consider making a costs order where it considers that a hearing has been postponed on the application of a party made less than 7 days before the date on which the hearing begins".*

206. The Tribunal next had regard to what had occurred in this case. We noted that on 13 January (the date on which witness statements were due to be exchanged) the claimant made an application for an extension of time for her witness statement to be prepared; and made an application for a postponement of the final hearing due to health and personal reasons. The respondent agreed to a 7 day extension of time for exchange of witness statements, but objected to the postponement application.

207. The Employment Judge granted a 7 day extension of time for the witness statements to be exchanged, but refused the application for postponement of the hearing because the letter from the claimant's GP did not say the claimant was unfit to attend the hearing.

208. The respondent sent the witness statements of its witnesses to the claimant on 20 January 2025.

209. The claimant, on 20 January, made an application for reconsideration of the decision to grant a 7 day extension for her witness statement and to refuse the application for a postponement of the hearing. The respondent objected again to the application for a postponement and made an application for an Unless Order in respect of the claimant's witness statement (which was refused).

210. The Employment Judge refused the claimant's application for reconsideration because the letter from the GP still did not state the claimant was unfit to attend the hearing. The letter to the claimant clearly explained that if the claimant obtained a letter from the GP stating she was unfit to attend the hearing, the application for postponement would be reconsidered.

211. The claimant, on Friday 31 January, renewed the application for postponement of the hearing and advised that she could not complete her witness statement without the required information from the documents. The respondent objected to this application.

212. The Employment Judge, noting the lateness of the application and objection and the fact there was still the issue of the claimant's witness statement, ordered all parties to attend the start of the final hearing on the Monday morning where all matters and applications would be discussed.

213. The claimant emailed the Tribunal (not copied to the respondent) at 18.23 to advise that she was not mentally prepared to attend.

214. The full Tribunal, the respondent's representative and the respondent's witnesses attended for the start of the final hearing on Monday 3 February. The claimant was not in attendance. The Employment Judge issued an Order discharging the hearing and relisting it for 10 – 13 March 2025. These dates were suitable to the respondent and the claimant's GP had noted in the letter that the claimant had said she wished the hearing postponed until after February.

215. The Tribunal, in considering the respondent's application, noted the first application for a postponement of the final hearing was made on 13 January 2025, with an application for reconsideration made on 20 January. The Tribunal, when rejecting the application for reconsideration made it very clear, in the letter of 22 January, that unless the GP confirmed the claimant was unfit to attend the hearing, the Employment Judge was not in a position to reconsider the decision. The letter went on to say that the Employment Judge would reconsider the decision if the claimant obtained a letter from the GP stating she was unfit to attend the hearing.

216. The claimant did not provide the letter from her GP until 31 January. The claimant gave no explanation for the delay in providing the letter from her GP. The effect of this was that the application made by the claimant to postpone the hearing was not made until Friday 31 January.

217. The Employment Judge directed parties to attend the hearing on Monday 3 February because the issue regarding the provision of the claimant's witness statement was outstanding and the Employment Judge wanted to address this and fix a date for the witness statement to be provided to the respondent, and also to fix dates for the re-arranged final hearing.

218. The lateness of the application made by the claimant on 31 January caused the difficulties which occurred on 3 February, and it was regretful the claimant did not approach her GP sooner for the required letter. The Tribunal however balanced this with the fact the first application for postponement was made on 13 January and was an ongoing matter, particularly given the claimant was told that she had to obtain a letter from her GP stating she was unfit to attend the hearing. The Tribunal decided in those circumstances, and having regard to the fact costs are the exception rather than the rule in Tribunal hearings, decided to refuse the respondent's application.

Date sent to parties **27 March 2025**